

82-1947

NO. \_\_\_\_\_

Office Supreme Court, U.S.

FILED

MAY 3 1983

ALEXANDER L. STEVENS,  
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

ERICH KOKER and BEATRICE E. KOKER,

APPELLANTS

VS

FREDERICK V. BETTS and JANE DOE BETTS,  
his wife, and their marital community,  
and SKEEL, MCKELVY, HENKE, EVANSON &  
BETTS, Law Firm Of Frederick V. Betts,

APPELLEES

AND

KENNETH L. LEMASTER and JANE DOE  
LEMASTER, his wife, and their marital  
community, and SAFECO INSURANCE COMPANY  
OF AMERICA, and GENERAL INSURANCE COMPANY  
OF AMERICA, and FIRST NATIONAL INSURANCE  
COMPANY OF AMERICA.

APPELLEES

A-P-P-E-N-D-I-X

JURISDICTIONAL STATEMENT

ON APPEAL FROM THE COURT OF APPEALS  
DIVISION I AND THE SUPREME COURT OF  
THE STATE OF WASHINGTON

Beatrice E. Koker  
Erich Koker  
Pro Se

939 N. 105th St.  
Seattle, WA 98133  
(206) 783-6998

APPENDIX "A"

DEF/RESPONDENT #1 ONLY  
Appeal - - - - #9346-1-I  
Supreme - - - 49006-6  
Court

*I do certify  
all xeroxing  
to be true  
Copies.  
Beatrice Koker*

Copy Of United States - - - - - A  
Court Appeal

SUPERIOR COURT  
KING COUNTY WASHINGTON

Order - Denying Def #1 - - - - - A-1:  
Summary Judgment Cause I  
Legal Malpractice

Granting Def #1                           A-1 thru A-4:  
Summary Judgment II III IV

Letter Of Recusal From                   A-5 and A-6:  
Honorable Judge Goodloe

COURT OF APPEALS  
DIVISION I

Notice Court Of Appeals                   A-7:  
Decision

Opinion - Affirming Granting  
Summary Judgment II III IV           A-8 Thru A-14:  
Reversing Denied Summary  
Judgment Cross-Appeal

(Appendix C-32 Thru C-42  
Petitioner's Report On  
The Opinion For Both  
Def #1 and Def #2:)

Order - Denying Motion                   A-15:  
For Reconsideration

SUPREME COURT  
STATE OF WASHINGTON

Denial Petition - - - - - A-16:  
For Review

Hearing Set For Ruling  
Pending Motions Same As  
For Def #2  
January 7, 1983:

Motion Denied \* - - - - - A-18:  
January 7, 1983:  
Exhaustion Of Remedies  
In Washington State  
End Of State Action

Affidavit Of "Lack Of  
Standard Of Care" A-19--A-34:  
A-35 and A-36:

Affidavit - Lay Witness  
Proving Def #1 Untruthful  
To Judge A-35 And A-36:

Statistical Record - CP  
Superior Court Summary  
Judgment Proceedings -  
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Statement Of Case - Record--A-41 Thru A-58:  
Trial Court Proceedings And  
CP AND RP References

Assignment Of Errors On A-59 And A-60:  
Appeal - Evaded and Avoided  
In Opinion Court Of Appeals  
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Where And How Federal Question  
Raised - Set Forth A-61 Thru A-72:

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## APPENDIX

CONSOLIDATED BY RULE 19.4 Or Rule 10.6:

Voluminous material may be set forth separately as per Rule 15. There is appeal for jurisdiction, probable jurisdiction, and/or postponement of jurisdiction, and the appendix as submitted is a necessity:

APPENDIX A is for F. V. Betts with his orders retyped, excerpts from standard of care affidavit, excerpts statement of case on record, numerical list of CP, where and how Federal question raised et al. Voluminous material may be set forth separately in Appendix as per rule 15. APPEAL #9346-1-I: (See Index)

APPENDIX B is for Kenneth L. LeMaster with likewise information for his case. One complaint for all defendants and two proceedings in state courts with closely related and identical issues. #8935-8-I:

APPENDIX C consolidated for both Betts and LeMaster with manifest errors, law provisions jurisdiction authorities et al. (See Index)

APPENDIX INFORMATION

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

ERICH KOKER and BEATRICE ) NOTICE OF  
E. Koker, husband and wife, ) APPEAL FROM  
Plaintiffs, Appellants, ) STATE COURT,  
Petitioners, ) CIVIL CASE  
V ) FROM  
FREDERICK V. BETTS and JANE ) COURT OF  
DOE BETTS, his wife, and their ) APPEALS-STATE  
marital community, and SKEEL, ) OF WASHINGTON  
McKELVY, HENKE, EVANSON & BETTS, ) #9346-1-I  
Law Firm Of Frederick V. Betts, ) DIVISION I  
Defendants #1 ) DEF.RESPOND-  
ENTS #1  
AND  
RESPONDENTS #1 ) STATE SUPREME  
KENNETH L. LeMASTER and JANE DOE ) COURT OF THE  
LeMASTER, his wife, and their ) STATE OF  
marital community, and SAFECO ) WASHINGTON  
INSURANCE COMPANY OF AMERICA, ) #49006-6  
and GENERAL INSURANCE COMPANY ) DEF/RESPOND-  
OF AMERICA, and FIRST NATIONAL ) ENTS #1  
INSURANCE COMPANY OF AMERICA. ) FROM:  
Defendants #2 ) SUMMARY JUDG-  
RESPONDENTS #2 ) MENT PROCEED-  
ING ) DATED:  
Jan 27, 1983

NOTICE OF APPEAL TO THE SUPREME  
COURT OF THE UNITED STATES

Notice is hereby given that Beatrice E. Koker  
and Erich Koker, the above named plaintiffs/  
Appellants/Petitioners hereby appeal to the  
Supreme Court of the United States from the

NOTICE OF APPEAL  
TO THE UNITED STATES  
SUPREME COURT Def/Respondents #1

A

final judgments of the Court of Appeals Div I  
and the Supreme Court of the State of Washington.  
ton.

"APPEALING FROM"

APPEALING FROM: The final judgment of a granted  
ed summary judgment affirmed in the Court of  
Appeals Division I State of Washington, Cause  
II III IV to Defendants/Respondents #1 -  
Frederick V, Betts et ux, et al. APPEAL 9346-  
1-I:

APPEALING FROM: The final judgment of REVERSING  
a denied summary judgment in the Court of  
Appeals Div I State of Washington, Cause I  
Legal Malpractice cross-appeal, Defendants/  
Respondents #1. Appeal 9346-1-I:

APPEALING FROM: Denial of motion for recon-  
sideration Cause I II III IV by the Court of  
Appeals Div I, State of Washington. Appeal  
9346-1-I:

APPEALING FROM: Denial of Petition for Review  
in the State of Washington Supreme Court, dis-

regarding and/or evading the fact four considerations to the court by rule were met by petitioner. Petition 49006-6:

APPEALING FROM: Constitutional denial for reconsideration-rehearing for denial of petition for review in two ways: (1) Unconstitutional to repeal rehearing statute RCW 2.04.160. (2) Disregarding, ignoring, evading discretionary ruling for rehearing, or RAP 1.2(a) for "justice." Clerk of the Supreme Court of the State of Washington "filing and no further action" on reconsideration-rehearing motion upheld by State Supreme Court. Under facts, a denial of constitutional right. And there are others. STATE CONSTITUTION ARTICLE 4, §1:  
Petition 49006-6:

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ATTACHED:

JUDGMENTS ENTERED: COURT OF APPEALS DIV I

AFFIRMING A GRANTED SUMMARY JUDGMENT July 6, 1982:  
JUDGMENT CAUSE II III IV:

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REVERSING DENIED SUMMARY JUDGMENT July 6, 1982

RECONSIDERATION DENIED: Aug 5, 1982

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NOTICE OF APPEAL  
Def/Respondents #1

A

JUDGMENTS ENTERED:

STATE SUPREME COURT OF WASHINGTON

PETITION FOR REVIEW DENIED Nov 5, 1982

MOTION TO GRANT OR DENY Jan 7, 1983  
REHEARING NOT RULED:

EVADING OPINION OF COURT Nov 5, 1982:  
REFUSED IDENTITY DISCLOSURE

(See: Appendix A-7 and A-15-16-17-18)

-- This appeal is taken pursuant to 28 USC  
§1257(3) and §1257(2) and USCA RULE 56 Summary  
Judgment and equivalent Washington State Court  
Rule CR 56 Summary Judgment.

-- This appeal is taken pursuant to the  
Constitution of the United States Amendment 14.  
and the entire Constitution as per circumstances  
and facts and evidence applicable. Not limit-  
ed to Title 8, Title 18, Title 28, Title 42,  
ARTICLE III ET AL.

-- This appeal taken pursuant to Judiciary  
Act of 1789 Section 25.

-- This appeal taken pursuant to existence  
of evading Federal Questions by State Courts  
who could not reach a determination without

NOTICE OF APPEAL  
Def/Respondents #1

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ruling on the Federal Question.

-- This appeal to the United States Supreme Court pursuant to denial of access to courts contrary to law. Denied a trial. State appeal did not correct.

"It is essential criterion of appellate jurisdiction that it revises and corrects proceeding in cause already instituted, and does not create that cause." 28 USCS §1257 Note 1:

-- This appeal pursuant to denial of access to courts via summary judgment contrary to law, affirmed on appeal, and reversal of denied summary judgment.

-- This appeal taken pursuant to Constitutional right to trial fully and fairly heard in a meaningful manner under the facts, rules, law, evidence and circumstances of the case at bar.

-- This appeal taken pursuant to determination of "STATE BAR ACT" and "STATE ACTION" and Attorneys "UNDER COLOR OF LAW." RCW 2.48

-- This appeal taken pursuant to seeking the supervision of the United States Supreme Court

NOTICE OF APPEAL  
De/Respondents #1

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invoking their jurisdiction in this appeal to Washington State Court of Appeals Division I and the Washington State Supreme Court in defense of Beatrice Koker's rights. The State Appellate Structure (Court of Appeals and Supreme Court) have so departed from the accepted and usual course of judicial proceedings and have sanctioned such a departure by a lower court as to call for an exercise of the supervision and justice from the highest court in the land. The Courts of the State of Washington have deprived me of rights and deprived me of redress and remedy to the damage of Beatrice Koker, citizen and person. The result has left me barren with no life, liberty, nor pursuit of happiness.

-- Below is a newspaper article from Seattle Post Intelligencer January 26, 1983, regarding the overcrowded courts. Appealing to the Supreme Court to determine "checks and balances" of State Courts subsidizing injustice, and deprivation of Constitutional rights and

avoiding, evading, escaping rulings and judgment. I ask investigation of this to determine if overcrowded court calendars and over-worked judges effects judgment of the courts in "denials" or rights, and judgments contrary to law.

STATE COURTS  
BEING FLOODED,  
A JUSTICE SAYS  
(Newspaper)

OLYMPIA (AP) --"Washington lawmakers have been warned that state courts are being strangled by paperwork and too many lawsuits and that quality of judges may be sliding because of poor pay.

"We're just inundated" state Supreme Court Justice Robert Brachtenbach told the Senate Judiciary Committee yesterday. "If the appeals courts of our state didn't take another case after tomorrow, it would take three years to catch up, even though productivity is up 40 percent."

At the superior court level, over 158,000 new suits were filed last year, and municipal, district and appeals courts also are jammed with cases, he said.

Two Years For Appeal

It can take two years to go through the appeals process, he said,

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NOTICE OF APPEAL Def/Respondents #1

A

Adding, "That's an intolerable period of time."

A new study shows that landlord-tenant disputes and domestic squabbles, not damage suits, are taking the bulk of judges' time, Brachtenbach said.

"A true story: A judge told me he spent two hours hearing arguments on who would get custody of the dog (in a divorce case)," he said.

Legislators may have to find non-court ways of settling time-consuming landlord-tenant disagreements and domestic cases, he said.

The courts already are diverting some cases to court commissioners, pre-settlement conferences and "everything we can think of" to ease the crunch, but lawmakers may want to order more arbitration or some other answer, he said.

"We need to stop this paperwork jungle," Brachtenbach said.

"Court case levels predicted for the year 2000 already have been passed, added Appeals Judge James Andersen.

Supreme Court Chief Justice William Williams argued for a fatter budget for his court, saying new law clerks and other personnel are needed to cope with the avalanche of complicated suits "such as WPPSS, asbestos cases and death penalty appeals."

The panel also heard a strong recommendation for jacking up judges' pay.

"Chairman Phil Talmadge, D-Seattle and others are pushing a bill to boost the pay for superior court judges from the current \$44,700 to \$60,000. Pay for an appeals judge would go from \$48,000 to \$63,000, and supreme court justices' pay would go from \$51,000 to \$66,000."

JURISDICTION: On appeal to the United States Supreme Court, petitioners Kokers ask that jurisdiction of this appeal is postponed until after review of the merits. The record speaks for jurisdiction.

This appeal is made in good faith by the petitioners Beatrice E. Koker and Erich Koker. This appeal is not made in anger nor animosity nor vindictiveness, nor maliciously. This appeal is made in grief.

Should the jurisdiction be granted, the petitioners ask the United States Supreme Court to reverse the entire case to trial by reversing the granted summary judgment affirmed on appeal in Cause II III IV to Defendants #1 We ask reversal of reversal of a denied

NOTICE OF APPEAL Def/Respondents #1

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summary judgment in lower court, on Cause I cross appeal of Def #1. In the alternative to trial, settlement out of court or damages awarded for injuries, deprivation, et al by the United States Supreme Court. The concealment theory upon which this case encompasses deceit and lying to judges and jury, and involving misrepresentation and suppression of material facts to injuries in 1976 trial for injuries, is by Washington State Court order and appeal to be forever buried. To bury this case is to invite resurrection."

HAND DELIVERED  
TO: (SERVICE)

Washington  
State Supreme  
Court

Court of Appeals  
Division I

Respondents #1  
Attorney Of Record  
Mr. Michael Mines  
(Now Changed To  
Ingrid Hansen)

(Addresses On Filed Copy)

RESPECTFULLY SUBMITTED,

/S/  
Beatrice E. Koker, Pro Se

/S/  
Erich Koker

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NOTICE OF APPEAL Def/Respondents #1

A

SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

ERICH KOKER and BEATRICE E. KOKER, husband and wife,	)	No. 864509
Plaintiffs,	)	ORDER:
-vs-	)	(1) DENYING
FREDERICK V. BETTS, et ux, et al,	)	DEFENDANTS #1
Defendants #1	)	MOTION FOR
KENNETH L. LeMASTER, et ux, et al,	)	SUMMARY JUDGMENT
Defendants #2.	)	ON CAUSE OF
		ACTION I
		(2) GRANTING
		DEFENDANTS #1
		MOTION FOR
		SUMMARY JUDGMENT
		ON CAUSES OF
		ACTION II, III,
		IV AND DECLARING
		NO JUST REASON
		FOR DELAY

THIS MATTER having come on for hearing  
before the undersigned judge of the above  
entitled court, upon the motion of defend-  
ants #1, impleaded herein as "Frederick V.  
Betts and Jane Doe Betts, his wife, and their  
marital community and Skeel, McKelvy, Henke,  
Evanson (sic) and Betts, Law Firm of Frederick  
V. Betts" and the court having considered the  
following documents:

1. Plaintiffs' Complaint #864509;

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SUPERIOR COURT ORDER (1) (2)  
SEE: RP "SUMMARY JUDGMENT"  
MAY 16, 1980 - P 59-60 Lines 3-14

A-1

2. Defendants #1 Motion for Summary Judgment of Dismissal Pursuant to CR 56 and accompanying Affidavit of Frederick V. Betts, dated December 6, 1979, one page;
3. Affidavit of Frederick V. Betts in Support of Motion for Judgment Dividing Defendants #1, dated February, 1980, eight pages;
4. Plaintiffs' Motion to strike Summary judgment Motion of Defendants #1 on Grounds of Error in the Affidavit of Frederick V. Betts, page 2, lines 9-15, filed March 10, 1980, hearing March 18, 1980;
5. Plaintiffs' Affidavit Form Memorandum in Opposition to Defendants #1 Motion for Summary Judgment, including plaintiffs' separate index for the Memorandum and Exhibits 1,2,3,4,5,6,7, 8A, 8B, 8C, 8D, 9, 10, 11 and 12, included in plaintiffs' Memorandum;
6. Plaintiffs' Motion for Continuance in the Event of "conspiracy of silence" in

Obtaining the "Lack of Standard of Care,  
Affidavit, filed April 14, 1980;

7. Motion by Plaintiffs for Continuance Due  
to "Conspiracy of Silence" to be Heard before  
Summary Judgment Hearing April 21, 1980;

8. Three-line Affidavit of F. V. Betts,  
Defendant #1 dated April 21, 1980, attaching  
court's instructions to jury from Superior  
Court of the State of Washington for King  
County, Cause No. 773 620;

9. Two-line Affidavit of F. V. Betts, Defendant  
#1, dated April 21, 1980. attaching  
letters sent to plaintiffs, dated February 3,  
August 18 and August 21, 1975;

10. Plaintiffs' Cross References by Subject:  
"Complaint" "Affidavit of Frederick V. Betts"  
"Memorandum in Opposition" Plaintiff;

11. Plaintiffs' Memorandum in Opposition to  
F. V. Betts, Defendants #1 Affidavit, dated  
April 21, 1980, filed April 28, 1980. Subject:  
Untruth #4 - Conspiracy Re: May 7, 1974

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SUPERIOR COURT ORDER SJ (1)(2)

A-2

Letter Written by Defendant #1 Regarding  
Continuance of Trial Date;

12. Plaintiffs' Affidavit form Memorandum in opposition to F. V. Betts, Defendant #1 Three-Line affidavit, dated April 21, 1980, Memorandum filed April 28, 1980. Subject: Court's Instructions;

13. Plaintiffs' Affidavit Form Memorandum in opposition to F. V. Betts, Defendants #1 Two-line Affidavit, dated April 21, 1980. Subject: 1975 Letters regarding Settlement Before Proof of Permanent Injuries;

14. Plaintiffs' Affidavit in Re: Proof of Informing Frederick V. Betts, Defendants #1 of Testimony of Third Lay Witness, filed May 7, 1980;

15. Affidavit of Chas H. W. Talbot, dated May 7, 1980, Re: "Standard of Care" affidavit Required by CR 56 in Opposition to Summary judgment Motion. Affidavit 16 pages long;

16. Plaintiffs' Affidavit Re: Lack of

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SUPERIOR COURT ORDER SJ (1)(2)

A-2 (a)

Standard of Care - Dr. Einar Henriksen Medical Report-Deposition. No Medical Report Ever Asked of Dr. Henriksen. No Deposition Planned Until Trial Time June 1976;

17. Plaintiffs' Affidavit Controverting, Refuting, Denying Frederick V. Betts, et ux, et al, Motion for Summary Judgment;

18. Plaintiffs' Affidavit in Opposition to Defendants #1, et ux, et al Motion for Summary Judgment "Standard of Care" - Laymen, dated May 8 1980.

19. Plaintiffs' Apology to the Court, dated May 13, 1980;

20. Affidavit of Michael Mines, dated May 7, 1980, attaching portions of Dr. Sata's deposition from King County Cause No. 773 620.

21. Memorandum of Defendants Betts and Skeel, McKelvy, Henke, Evenson & Betts, in opposition to Plaintiffs' Memoranda regarding Defendants #1 Motion for Summary Judgment. Written by Michael Mines; not in affidavit form;

22. Plaintiffs' Affidavit and Memorandum in Answer Controverting Attorney Michael Mines Memorandum Re: Defendants #1 Motion for Summary Judgment. In Opposition. Dated: May 12, 1980;

23. Plaintiffs' Document Dated May 14, 1980 Re: Medical Deposition (of Dr. William K. Sata) Not Accurately Reported of Missing Pages by Defendant #1: Re: Additional Medical Depositions: Depositions of Plaintiffs' Medical Witnesses Submitted to the Court:

Dr. William K. Sata	1976 Trial 773620
Dr. Anders E. Sola	1976 Trial 773620
Dr. Einar Henriksen	1976 Trial 773620
Dr. Thomas Smersh	1976 Trial 773620
Dr. Freidinger	1976 Trial 773620

24. Plaintiffs' Document Filed May 15, 1980 Re: Clarification Mr. Frederick V. Betts eight page Affidavit Re: \$2,839.00 Dr. Sola's Medical Bill and Re: Copy of Dr. Freidinger's Deposition Presented to Court as Last Medical Witness. Dr. Arthur Freidinger Deposition  
SUPERIOR COURT ORDER SJ (1)(2)

A-3(a)

Submitted to the Court;

25. Dr. Freidinger Progress Record for Plaintiff Beatrice Koker for 1976 Trial;
26. Affidavit of Dr. Einar Henriksen regarding Plaintiff Beatrice Koker's Injuries, dated June 23, 1978, File for Cause 864509 May 15, 1980;
27. Plaintiffs' Notice of Intent to Ask Reconsideration of Three Points Only of Cause II, III, IV Dated: May 19, 1980;
28. Plaintiffs' Motion of Reconsideration - filed May 21, 1980; Motion for Hearing June 6, 1980 - 9:30 a.m.;
29. Plaintiffs' Motion for Reconsideration - Additional filed May 29, 1980, to be heard scheduled motion hearing June 6, 1980.

And the court having heard additional oral argument on plaintiffs' motion for reconsideration on June 6, 1980 and having reconsidered his oral opinion in light of the material submitted by the plaintiff in support her motion for reconsideration and being fully

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SUPERIOR COURT ORDER SJ (1)(2)

A-4

advised in the premises, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. The motion of defendants #1 for summary judgment with respect to Cause of Action I - Malpractice is denied, it appearing that there are genuine issues of material fact with respect to that cause of action;

2. It appearing that there is no genuine issue of material fact with respect to Causes of Action II, III and IV, defendants' motion for summary judgment with respect to Causes of Action II, III and IV is granted and said causes of action are dismissed;

IT IS FURTHER ORDERED with respect to Causes of Action II, III and IV, and the summary judgment granted thereon, that there is no just reason for delay of the entry of final judgment with respect to the dismissal of those actions.

DONE IN OPEN COURT this 3 day of  
Sept  
June, 1980.

/S/  
Judge William C. Goodloe

SUPERIOR COURT ORDER SJ (1)(2)  
CP FILE #177 P 1:

A-4(a)

William C. Goodloe  
Judge of the Superior Court  
Seattle, 98104

June 3, 1980

Certified Mail

Mrs. Beatrice E. Koker  
939 North 105th  
Seattle, WA 98133

Mr. Michael Mines  
Attorney At Law  
40th Floor - Bank of  
California Building  
Seattle, WA 98165

Re: Koker vs. Fred V. Betts  
King County Cause #864 509

Dear Mrs. Koker and Mr. Mines:

I have been working with the above entitled case on a preassigned basis for many months now and from the beginning I had a very uneasy feeling concerning my personal friendship with Fred Betts. I have been associated with Fred Betts on the practice of the law for many years. Because of this, I revisited the Code of Judicial Conduct over the last weekend. I cite to you Canon III of the Code of Judicial Conduct, Sub-paragraph C.

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LETTER OF RECUSAL CP FILE # 151 P59:  
HONORABLE JUDGE WILLIAM C. GOODLOE

A-5

"Disqualification"

1. A judge should disqualify himself in a proceeding in which his partiality might reasonably be questioned, including but not limited to instances where:

a) he has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding ...."

I believe that my personal knowledge of Mr. Betts over the years might cause a reasonable question to arise concerning a bias or prejudice in his favor.

I have discussed this matter with the Presiding Judge and he has agreed to assign a Spokane judge to come to Seattle for the purposes of the trial. If each of you can agree upon the trial date, the Presiding Judge will assign a trial date upon informing him.

Having checked the record, I believe the case is ready for trial at this time. I will deliver the materials that I have acquired to the new judge when his identification is known.

Yours truly,

/S/

William C. Goodloe

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LETTER OF RECUSAL HONORABLE JUDGE GOODLOE

A-6

THE COURT OF APPEALS  
OF THE  
STATE OF WASHINGTON  
Seattle  
July 6, 1982

### Counsel:

Re: No. 9346-1-I, Koker v Betts and LeMaster  
King County No. 864509

The opinion filed by this court in the above referenced case today states in part as follows:

"Affirmed in part. Reversed in part."

In accordance with RAP 14.4(a), claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed to have been waived.

In the event counsel desires to file a motion for reconsideration, your attention is directed to RAP 12.4(b), which states that the motion for reconsideration must be filed within 20 days after the decision is filed.

Very truly yours,  
/S/  
Richard D. Taylor, Clerk

A-7

IN THE COURT OF APPEALS OF  
THE STATE OF WASHINGTON

ERICK KOKER and BEATRICE )  
E. KOKER, husband and wife, )  
Appellants, )  
v. )  
)  
FREDERICK V. BETTS and JANE )  
DOE BETTS, his wife, and )  
their marital community, and )  
SKEEL, McKELVY, HENKE, EVAN- )  
SON & BETTS, Law Firm of )  
FREDERICK V. BETTS, )  
Respondents, )  
)  
and )  
)  
KENNETH L. LeMASTER and JANE )  
DOE LeMASTER, his wife, and )  
their marital community, and )  
SAFECO INSURANCE COMPANY OF )  
AMERICA, and GENERAL INSUR- )  
ANCE COMPANY OF AMERICA, and )  
FIRST NATIONAL INSURANCE )  
COMPANY OF AMERICA, )  
)  
Defendants. )  
)  
No. 9346-1-I  
DIVISION ONE  
FILED  
JUL 6 1982

FILED  
JUL 6 1982

PER CURIAM.--Plaintiff Beatrice E.  
Koker appeals from a summary judgment  
dismissing her complaint for 1) conspiracy,  
2) misrepresentation, fraud, deceit, and 3)  
outrage. Defendant, Frederick V. Betts,

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OPINION COURT OF APPEALS FOR DEF #1

OPINION COURT OF APPEALS FOR DEF #1

A-8

cross-appeals from a denial of his motion for summary judgment on the claim of legal malpractice.

#### FACTS

Beatrice Koker and her husband, now deceased, brought a personal injury action in 1976, Koker v. Sage, King County Cause No. 77360, seeking damages for injuries she sustained in a 1971 automobile accident. Liability was admitted and the jury returned a verdict of \$4,600 in favor of Koker. She was represented at trial by Betts.

Koker, acting pro se, appealed the judgment, which was subsequently affirmed by this court in an unpublished opinion. Koker v. Sage, Court of Appeals, Division I, No. 4916-I, petition for review denied 91 Wn.2d 1014 (1979).

Koker commenced this action against Betts alleging 1) legal malpractice, 2) conspiracy, 3) misrepresentation,

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OPINION COURT OF APPEALS FOR DEF #1

A-8(a)

Allard v. Board of Regents, 25 Wn. App. 243, 247, 606 P.2d 280 (1980). The evidence is sufficient only if the facts and circumstances relied upon to establish the conspiracy are inconsistent with a lawful or honest purpose and reasonably consistent only with the existence of the conspiracy.

Baun v. Lumber & Sawmill Workers Local 2740, 46 Wn.2d 645, 656, 284 P.2d 275 (1955); O'Brien v. Larson, 11 Wn. App. 52, 56, 521 P.2d 228 (1974). This evidence must be clear, cogent, and convincing. Corbit v. J.I. Case Co., supra at 529; O'Brien v. Larson, supra at 55.

A motion for summary judgment will be granted only if, after viewing all the pleadings, affidavits, depositions, admissions and all reasonable inferences therefrom in favor of the nonmoving party, it can be said (1) that there is no genuine issue of material fact, (2) that reasonable

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OPINION COURT OF APPEALS FOR DEF #1

A-9

persons could reach only one conclusion, and (3) that the moving party is entitled to judgment as a matter of law. Peterick v. State, 22 Wn. App. 163, 180-81, 589 P.2d 250 (1977). To avoid summary judgment, the nonmoving party may not rely solely on speculation and argumentative assertions. Upon the submission by the moving party of adequate affidavits, the nonmoving party must set forth specific facts to rebut the moving party's contentions and show a genuine issue of material fact. Allard v. Board of Regents, supra at 247; Peterick v. State, supra at 181.

Koker alleges that various actions and statements by the two attorneys during and after trial constituted a conspiracy to deprive her of a fair trial.

From an examination of the record, it appears that all of these statements and events are consistent with a lawful purpose and not reasonably consistent with the

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OPINION COURT OF APPEALS FOR DEF #1

A. 9 (a)

existence of a conspiracy. There is no evidence of an "agreement." There are no written communications or contracts, or conversations which would create even a suspicion of a conspiracy. Further, it appears that Betts had a contingent fee arrangement with Koker which is inconsistent with the existence of a conspiracy. Since there is no evidence of an agreement, a conspiracy cannot be established as a matter of law. Corbit v. J. I. Case Co., supra. The trial court did not err in granting summary judgment as a matter of law on this issue.

MISREPRESENTATION, FRAUD & DECEIT

Next, Koker alleges that Betts committed misrepresentation, fraud and deceit by failing to disclose to the trial court that various statements made by LeMaster were untrue.

OPINION COURT OF APPEALS FOR DEF #1

*A-10*

In Washington in order to recover in a cause of action for fraud the following elements must be established:

(1) A representation of an existing fact; (2) its materiality; (3) its falsity; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) his intent that it should be acted on by the person to whom it is made; (6) ignorance of its falsity on the part of the person to whom it is made; (7) the latter's reliance on the truth of the representation; (8) his right to rely upon it; (9) his consequent damage.

Sigman v. Steven-Norton, Inc., 70 Wn.2d 915, 920, 425 P.2d 891 (1967); Martin v. Miller, 24 Wn. App. 306, 308, 600 P.2d 698 (1979). Because they are so easy to assert, fraud and deceit must be established by clear, cogent and convincing evidence. House v. Thornton, 76 Wn.2d 428, 433, 457 P.2d 199 (1969).

Whether a misrepresentation was made with intent to deceive is a question of fact. Wilburn v. Pioneer Mutual Life Insur. Co., 8 Wn. App. 616, 620, 508 P.2d 

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 OPINION COURT OF APPEALS FOR DEF #1

A-10 (a)

632 (1973). However, if all the facts and circumstances are consistent with an honest intent, fraud is not proved. Marrazzo v. Orino, 194 Wash. 364, 377, 78 P.2d 181 (1938).

From an examination of the record, Koker has not presented any evidence of LeMaster's intent to misrepresent, deceive or commit a fraud on either Koker or her counsel.

#### OUTRAGE

Next, Koker argues that the trial court erred when it held as a matter of law that Bett's conduct was not so extreme and outrageous as to permit recovery under the tort of outrage.

In order to recover under this theory the following elements must be established; (1) emotional distress must have been inflicted intentionally or recklessly (mere negligence is not enough); (2) the conduct of the defendant must have been outrageous

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OPINION COURT OF APPEALS FOR DEF #1

and extreme; (3) the conduct must have caused severe emotional distress to the plaintiff. Grimsby v. Samson, 85 Wn.2d 52, 59, 530 P.2d 291 (1975).

Recovery for outrage can only be had if the conduct has been "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Grimsby v. Samson, surpa at 59; Restatement (Second) of Torts § 46, comment d (1965).

Whether conduct was extreme and outrageous is for the court to determine; if reasonable people might differ, then the question is for the jury. Bowe v. Eaton, 17 Wn. App. 840, 845, 565 P.2d 826 (1977); Restatement (Second) of Torts § 46, comment h (1965).

In the instant case there is no evidence of any intentional or reckless  
OPINION COURT OF APPEALS FOR DEF #1

A-11(a)

acts. In fact Koker stated at the hearing before the trial court, "I don't see that these people want to go about doing harm deliberately." Such statements are inconsistent with a claim for outrage. Grimsby v. Samson, supra. Even though the extreme and outrageous character of the conduct may arise from the actor's superior position, no liability results from "mere insults, indignities, or annoyances." Contreras v. Crown Zellerbach Corp., (Stafford, J., concurring), 88 Wn.2d 735, 744, 565 P.2d 1173 (1977); Restatement (Second) of torts § 46 comment e. The trial court properly dismissed this cause of action as a matter of law. Bowe v. Eaton, supra.

#### LEGAL MALPRACTICE

Betts argues in his cross-appeal that summary judgment should have been granted on the issue of legal malpractice because the affidavit of Koker's expert is insufficient to create an issue of fact.

A-12

A plaintiff in a medical malpractice case must establish a standard of care, and violation of that standard, through expert testimony, unless laymen would have no difficulty recognizing the claimed negligence as a departure from prevailing standards. Walker v. Bangs, 92 Wn.2d 854, 858, 601 P.2d 1279 (1979); Swanson v. Brigham, 18 Wn. App. 647, 651, 571 P.2d 217 (1977).

In support of her claim Koker filed the affidavit of Chas. Talbot, an attorney, which states:

I am unable to form an opinion as to whether Mr. Betts' handling of the case met the applicable professional standards. The record shows numerous instances of highly questionable acts and omissions by Mr. Betts, which suggest, but do not conclusively establish, significant deviations from acceptable practice.

(Italics ours.) When an expert cannot state an opinion, his testimony is inadmissible. O'Donoghue v. Riggs, 73 Wn.2d 814, 822, 440 P.2d 823 (1968). Affidavits  
OPINION COURT OF APPEALS FOR DEF #1

opposing a motion for summary judgment "shall set forth such facts as would be admissible in evidence." CR 56(e). Since Talbot's affidavit did not state an opinion no material issue of fact is raised. In addition, there is no other evidence which creates a material issue of fact. The trial court erred in not granting summary judgment.

Affirmed in part. Reversed in part.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040. IT IS SO ORDERED.

/s/ \_\_\_\_\_  
CHIEF JUDGE

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OPINION OF THE COURT OF APPEALS FOR DEF #1

A-14

IN THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON

ERICK KOKER and BEATRICE )  
E. KOKER, husband and wife, ) No. 9346-1-I  
Appellants, )  
v. )  
FREDERICK V. BETTS and JANE )  
DOE BETTS, his wife, and their )  
marital community, and SKEEL, )  
McKELVY, HENKE, EVANSON & )  
BETTS, Law Firm Of Frederick )  
V. Betts, )  
Respondents, )  
and )  
KENNETH L. LeMASTER and JANE )  
DOE LeMASTER, his wife, and )  
their marital community, and )  
SAFECO INSURANCE COMPANY OF )  
AMERICA, and GENERAL INSURANCE )  
COMPANY OF AMERICA, and FIRST )  
NATIONAL INSURANCE COMPANY OF )  
AMERICA. Defendants. )

THE appellants, Erich Koker and Beatrice E. Koker, having filed their motion for reconsideration herein and a majority of the court having determined that it should be denied; Now, therefore, it is hereby ORDERED that the motion for reconsideration be, and the same hereby is, denied.

Dated this 5th day of August, 1982.

/S/  
Frank D James, Acting Chief Judge

A-15

THE SUPREME COURT  
State of Washington  
Olympia, WA  
98504

Ms. Beatrice Koker  
939 North 105th Street  
Seattle, Washington 98133

Helsell, Fetter-  
man, Martin, Todd  
& Hokanson

Mr. Michael Mines  
Attorney at Law  
40th Fl Bank of  
California Center  
Seattle, WA 98164

Mr. William  
Helsell  
P. O. Box 21846  
Seattle, WA 98111

Counsel:

Re: Supreme Court No. 49006-6- Beatrice  
Koker, et ux v Frederick Betts, et ux Court  
of Appeals No. 9346-1-I

The above entitled Petition for Review  
was considered by the Court on its November  
5, 1982, Petition for Review Calendar.

The Petition was denied by order number  
107/126 filed on November 8, 1982.

Very truly yours,

/s/  
Reginald N. Shriver  
Acting Clerk

A-16

THE SUPREME COURT  
State of Washington  
Olympia  
98504

December 6, 1982

Ms. Beatrice Koker  
939 North 105th Street  
Seattle, WA 98133

Betts, Patterson & Mines  
Mr. Michael Mines  
40th Fl., Bank of Calif  
Seattle, Washington 98164

Mr. William A.  
Helsell  
Attorney at Law  
P. O. Box 21846  
Seattle, WA 98111

Re: Supreme Court No. 48900-9 Koker, et ux  
v. Betts, et al. Supreme Court No. 49006-6-  
Koker, et ux, v Betts, et al.

Counsel:

Petitioner's "motion to Rule on Pending  
Motions" dated November 30, 1982, will be  
considered a motion to modify the clerk's  
determination communicated by letter dated  
November 23, 1982, filing various post mandate  
motions without further action.

The motion will be set for consideration  
before a department of the Court on its Jan 7,  
1982 motion calendar.

Very truly yours,

/s/  
REGINALD N. SHRIVER  
Acting Clerk

(Note: Please See A-17-(a))

A-17

Regarding Appendix A-17 calling the  
motions before the State Supreme Court as post  
mandate, when in fact my motions were filed  
pre mandate. I submitted a document filed  
in the Supreme Court of State of Washington  
December 20, 1982. Quoting from therein:

PRE-MANDATE

Page 1/23-27: 2/1-5: 2/24-28:

"The letter states petitioner Beatrice Koker's motions were "POST-mandate" This is error and must be corrected to read as "PRE-Mandate", as the mandate was issued AFTER the motion for Reconsideration. The Supreme Court grants as discretionary and not as a matter of right. CONSTITUTION OF STATE ART. 4, §2. RAP 1.2 (a)(c):

"Art 4, §2, states the decision of Supreme Court of the state becomes final unless within specified time, petition for hearing has been filed or rehearing has been ordered on court's own motion. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS V LUCAS FLOUR CO. (1962) 369 US 95, 7 L Ed 2d 593, 82 S Ct 571:

"AMENDMENT 14 OF THE UNITED STATES CONSTITUTION GOVERNS ANY ACTION OF STATE WHETHER THROUGH ITS COURTS, OR THROUGH EXECUTIVE OR ADMINISTRATIVE OFFICERS Constitution Amendment 14 Note 11 p 55:"

(Note: A-18: The Supreme Court denial)

A-17(a)

THE SUPREME COURT  
State Of Washington  
Olympia  
98504  
January 7, 1983

Mr. Erich Koker and Mrs. Beatrice E. Koker  
939 North 105th Street  
Seattle, WA 98133

Betts, Patterson & Mines  
Mr. Frederick Betts  
40th Floor, Bank of California  
Seattle, WA 98164

Helsell, Fetterman, Martin, Todd & Hokanson  
Mr. William A. Helsell  
PO Box 21846  
Seattle, WA 98111

RE: No. 48900-9 - KOKER V BETTS, ET AL  
No. 49006-6 - KOKER V BETTS, ET AL

Counsel:

After a hearing this day, the following  
Notation Order was entered in the above en-  
titled action in Volume 14, at page 677, of  
the Motion Docket.

MOTION TO MODIFY CLERK'S LETTER  
OF DETERMINATION:

"DENIED."

/S/  
William H. Williams  
Acting Chief Justice  
Very truly yours,

/S/  
REGINALD N. SHRIVER  
Acting Clerk

A-18

CP FILE #123 p 244: This is an affidavit by an attorney regarding the "LACK OF STANDARD OF CARE" of F. V. Betts, Def #1. The purpose of the affidavit to meet the CR 56 and Rule 56 demand for the affidavit to raise the issue for the jury.

There is a "conspiracy of silence" among attorneys, from my own knowledge and experience, to not submit the affidavit even though in complete agreement the standard of care is not met. The Lawyer Referral also had the same difficulty, and advised me to go out of the city to obtain the attorney affidavit.

I went to Spokane, Bellingham, Mount Vernon, and called long distance to many other cities, without result. The gentleman who wrote the affidavit of lack of standard of care, is from Seattle, and told him my predicament trying to keep a mandatory court rule, and he consented to examine my records and if he found them to warrant lack of standard of care he would provide the affidavit.

(QUOTING BEGINNING A-20)

*Appeal 9346-I-F*

*A-19*

TYPE-COPIED FROM CP FILE #123 p 244: PARTIAL.

p 3/21-23:

B. ADHERENCE TO APPLICABLE PROFESSIONAL  
STANDARDS NOT DEMONSTRABLE FROM RECORD

4. No adequate showing that standards  
were met.

p 3/29-30; p 4/1-10:

5. Case presented in confusing way. A reading of the trial transcript conveys a distinct impression that the plaintiffs' case was presented to the jury in a confused and confusing way. The order in which the proof was presented makes no apparent sense. Mr. Betts seems not to have known what the proof would be in several important instances. The trial judge found it appropriate to intervene in the present of the jury on more than one occasion to attempt to clear up the seemingly unnecessary confusion--a disturbing state of affairs. It seems clear that this state of things resulted from poor preparation by plaintiffs' counsel.

p 4/11-15; and 21-30: P 5/1-4: "6. Failure to call important medical witnesses. The failure to call certain witnesses raises questions in my mind, and opposing counsel in closing argument noted the absence of those witnesses to the jury, in what must have been an effective way." "The presentation of the medical testimony with respect to Drs Sata and Smersh, based on reports, and reports of reports, is particularly confusing in the trial Record of Proceedings. How the jury made sense of that presentation is a mystery. The failure to call Dr Sata is compounded by counsel's failure to have Dr Sata's deposition of 20 August 1975 transcribed and available for trial use. The failure to call Dr Sata was particularly damaging because his early report--not satisfactory from the plaintiff's point of view--was dragged through the case, and yet his later deposition drew the sting out from the earlier report. In the absence of the doctor and absence of his

deposition, as incorrect and damaging version of his views were allowed to be presented to the jury. Why?"

p 5/5-19: "7. Medical picture presented to trial court incorrect. A careful reading of the entire body of medical reports and medical depositions reveals that certain physicians, including Dr. Sata, had later, better opinions about the diagnosis, treatment, and prognosis of Mrs Koker's conditions, and the causes of her complaints, than their earlier views. These later views were not brought out by Mr. Betts at trial, to plaintiffs' serious detriment. Particularly troubling is the question of typing up the plaintiff's various physical complaints to the findings by various physicians. The clinical picture was obviously initially confusing not only to Dr. Sola, but also to most of the specialists. Dr. Smersh's testimony, or at least the reading of his deposition, was essential to cut

CP FILE #123 p 244 EXCERPTS Appeal 9346-1-J  
"Lack Of Standard Of Care"

4-22

the ground out from under defendant's counsel's argument that Mrs Koker's ear problems were unreal."

p 5/20-30: "8. Lack of medical preparation. Ordinarily plaintiff expects the plaintiff's attorney should work closely with the attending physician, or with a medical consultant, to develop a medical theory ahead of trial to account for the symptoms, or else to reduce the scope of the plaintiff's testimony at trial to those items of complaint for which there is reasonably solid medical testimony as to causal link between the occurrence (car collision, in this case) and the symptoms. Failure to do this work is malpractice in practitioners of Mr Betts' skill and expertise. I see no indication that preparation of this sort took place in this case."

p 8/3-9: "(c) Failure to preserve recapitulation. Mr Betts' written recapitulation in aid of this jury argument was not

preserved, which I regard as both sloppy and dangerous, most especially in a case where the trial itself has been, as this one appears to have been, a picture of muddle. This failure to preserve the recapitulation may have cost the Kokers an appellate decision for a new trial."

p 8/10-16: "10. Failure to call helpful defense medical examiner. Dr Harry Leavitt, the well-known and forsenically experienced orthopod (still in practice) examined plaintiff for defendant and submitted a report that I find generally favorable. He should have been called by Mr Betts to rebut the damaging report by the second defense examiner. The failure to call him seems negligent."

p 8/17-25: "11. Failure to limit second defense medical exam. It is incomprehensible that Mr Betts permitted the defense a second "bite at the cherry" in terms of a CR 35

examination. The second defense exam should have been limited to conditions after Dr Leavitt's exam, and the history-taking should have been similarly restricted. Mr. Betts could and should have insisted that Dr Klemp-erer, the second examiner, begin with Dr Leavitt's reports, and he should have pre-vented the defense from burying Dr Leavitt's report and opinion."

p 10/22-30: p 11/1-11: "14. Failure to explain medical terminology. Competent bodily-injury trial counsel necessarily assume that jurors are unfamiliar with medical terminology, procedures, practices, pre-concept-ions &c. In leading a physician through his testimony, and especially with the first physician to testify, plaintiff's counsel must take care to have the physician explain terms, diagram the relevant body structures, set out the general diagnostic approach, and, in general, lecture the jurors--even the

CP FILE #123 p 244 EXCERPTS ~~Appeal 9346-1-1~~  
"Lack Of Standard Of Care"

A-25

judge. Mr Betts did not do this. Mr Le Masters, Chief defense counsel, on the other hand, led out a classic direct examination of his expert, Dr Klemperer. The contrast is distressing. I believe that Mr Betts' failure to handle his medical witnesses properly when contrasted with Mr LeMaster's cogent examinations, inevitably had a bad effect on the jury. The significance of test procedures, myelograms, EMG &c., in particular was not set out for the jury's grasp. This inadequate direct examination of the plaintiff's physicians is a noteworthy deviation from acceptable practice and is not explained in Mr Betts' affidavit in support of his motion for summary Judgment."

p 15/17-31: p 16/1-11: "C. CONCLUSION"

"The records in Koker v Sage indicate that plaintiffs' counsel prepared the case inadequately, did not communicate effectively with the principal client, tried the case in a confused manner, omitted critical elements

CP FILE #123 p 244 EXCERPTS Appeal 9346-1-1  
"Lack Of Standard Of Care" A-26

of the order of proof, argued the case ineffectively, failed to present a cogent medical picture, and, in general did not handle the case in accordance with the accepted & applicable standards of practice. As I suggested in Paragraph 5 above, I cannot unequivocally assert that there was unquestionable deviation: there is apparent deviation from the applicable standards. Those deviations might possibly all be subject to being explained away by plaintiff's counsel in the matter. The affidavit in support of summary judgment does not provide such explanation.

My conclusion is that there is a case to be answered, & that it has not been answered, insofar as plaintiff's claims for relief against Grederick V. Betts and his-then partners go."

/S/

Chas. H. W. Talbot

/S/

Lance Knight Notary public  
in & for the State of Washington Seattle

CP FILE #123 p 244 EXCERPTS *appeal 9346-1-I*  
"Lack Of Standard Of Care"

A-27

CP FILE #123 P 244 CITED  
PHRASES OR SENTENCES WITH  
PAGE AND LINE NUMBERS AFTER  
EACH FOR LOCATION IN THE  
AFFIDAVIT OF LACK OF  
STANDARD OF CARE

"-- a disturbing state of affairs." (p 4/7):  
"How the jury made sense of that presentation is a mystery." (p 4/24-25): "These later views were not brought out by Mr Betts at trial, to plaintiff's serious detriment." (p 5/10-11-12): "Dr Smersh' testimony, or at least the reading of his deposition, was essential to cut the ground out from under defendant's counsel's argument that Mrs Koker's ear problems were unreal." (p 5/16-20):

"Failure to do this work is malpractice in practitioners of Mr Betts' skill and expertise." (p 5/28-29): "The "don't penalize the plaintiff" argument is generally felt to be weak and unconvincing, especially to juries not sophisticated in medical matters;

they believe in medical certainty." (p 6/  
14-17): "One gathers from Judge Horowitz's  
comment about the clerk's file being a  
"skeleton" file that no effort was made by  
Mr Betts' by way of pre-trial requests - -."  
(p 7/5-8): "Mr Betts' written recapitula-  
tion in aid of this jury argument was not  
preserved, which I regard as both sloppy and  
dangerous, most especially in a case where  
the trial has been, as this one appears to  
have been, a picture of muddle." (p 8/3-7):

"It is incomprehensible that Mr Betts  
permitted the defense a second "bite at the  
cherry" in terms of CR 35 examination. The  
second defense exam should have been limited  
to conditions after Dr Leavitt's exam, and  
the history-taking should have been similarly  
restricted." (p 8/17-22): "He seems not to  
have suggested to the jury that plaintiffs  
were entitled to a money award for anything  
other than their out-of-pocket-expenses!"

(p 9/7-10):

CP FILE #123 p 244

EXCERPTS *Appeal 9346-1-I*

"Lack Of Standard Of Care"

*A-29*

"This is unexplained deviation from the applicable standard of practice." (p 9/22-23): "The argument on that point was weak and ineffective, both as it reads in the record, and more importantly, as it is reflected in the inadequate award." (p 10/10-13): "-- Mr Betts not only missed an opportunity to argue for damages for aggravation to Mrs Koker's previously dormant spondylosis, but also played into defense counsel's argument that plaintiff's complaints were not explainable to the physical facts." (p 10/17-21): "The contrast is distressing." (p 11/2-3): "This inadequate direct examination of the plaintiff's physicians is a noteworthy deviation from the acceptable practice and is not explained in Mr Betts' affidavit in support of his motion for summary judgment." (p 11/7-11): "-- the cumulative impression however is that at the least a question is raised as to the deviation from proper standards." (p 11/18-20):

CP FILE #123 p 244 EXCERPTS *Serial 9346-12*  
"Lack Of Standard Of Care"

"It is painful to note Mr. Betts inability to be precise in explaining how Mr LeMasters knew that Dr Henriksen was involved in the case." (p 12/17-18): "- - then Mr Betts gave an inaccurate offer of proof - which is inexplicable. A proper offer of proof might have led to an appellate decision in Mrs Koker's favor." (p 13/14-15-16):

"These notes (referred to by Mrs Koker as "The List") were, I am told not prepared for jury purposes and they sound/read as if she were confused. Thus Mr Betts appears to have allowed defense counsel to breach attorney-client-confidentiality, with the result that the defense imuendo that she was mentally imbalanced was strengthened. I cannot fathom any purpose in submitting to this." (p 13/29-30: p 14/1-5): "Mr Betts final argument left out important elements." (p 14/23-24): "Either his final argument was ill-prepared, not crafted to include all points

within the allotted time, or else Mr Betts, knowing that the time was insufficient, nonetheless acquiesced--with no objection for the record--in a procedure that he knew would be hurtful to the client's interest. If the case were prepared with even minimum, non-specialist skill, plaintiff's attorney would have known before going to trial what the salient points of this final argument would be. Specialist practitioners begin framing final argument during pre-trial discovery. Mr Betts has been to trial once before on this case. He must have known what he had to cover. (mistrial) (p 14/24-30: p 15/1-5):

"The court file failed to disclose all the depositions that had been scheduled and held. I RP 4."(p 12/6-7): "The deposition of one physician (Henriksen) who treated plaintiff, whose trial testimony was required, was not taken until the evening of the first day of trial, after lengthy discussion with

with the trial judge (I RP 9-17)(p 12/9-12): "It is painful to note Mr Betts' inability to be precise in explaining how Mr LeMasters knew that Dr Henriksen was involved in the case." (p 12/17-20):

"If Mrs Koker is correct in her statement that she gave Mr Betts a proper summary of Mrs Conley's proposed testimony by two letters (reproduced in photocopy extract in her complaint, pp 7-8), then Mr. Betts gave an inaccurate offer of proof--which is inexplicable. A proper offer of proof might have led to an appellate decision in Mrs. Koker's favor." (p 13/10-16):

Please Note: Mr Betts is untruthful to the judge in the 1976 trial saying he knew nothing of the third lay witness or what she would have to say. CP FILE #1  
p 697 Appeal 9346-1-I: Paragraph 1.17 thru  
Paragraph 1.22: In the RP there is admitting to receiving letters from Beatrice Koker and  
CP FILE #123 p 244 EXCERPTS Appeal 9346-1-I  
"Lack Of Standard Of Care"

A-33

also misleading the court saying the third lay witness had not been called to testify.

RP "SUMMARY JUDGMENT" June 6, 1980; p 20/5-18:

Please See Appendix A-35 and A-36 following.  
These are affidavits of this witness denied by the trial judge 1976, and subject of the inaccurate and untruthful offer of proof by Mr Betts in trial of 1976 - and subject to malpractice.

SUMMARY JUDGMENT DENIED,  
MALPRACTICE MR BETTS

The trial court Honorable Judge William C. Goodloe, accepted the "lack of standard of care" affidavit as raising issues for the jury in malpractice. The Court of Appeals reversed a denied summary judgment, without consideration of abuse of discretion by lower court. The expert witness stated an opinion in his 16 page affidavit, reiterated herein Appendix A. The Court of Appeals chose to ignore 431 lines of an affidavit, and base their reversal of denied summary judgment on 6 lines of the affidavit. Manifest error. (A-13)  
CP FILE #123 p 244 EXCERPTS Appeal 9346-1-I  
"Lack Of Standard Of Care"

STATE OF WASHINGTON )  
 ) SS.  
COUNTY OF GRAYS HARBOR )

MILDRED JONES, FORMERLY MILDRED  
CONNELLY, BEING FIRST DULY SWORN  
UPON OATH, DEPOSES AND SAYS:

That quite awhile before her trial in 1975, Mrs. Koker asked me if I would be willing to testify in that trial and I was willing to. She later said her attorney, Mr. Betts, would contact me. Quite awhile before the trial of 1976, she asked if I was still willing to testify in the next trial and I was. Mrs. Koker later again stated that Mr. Betts would contact me.

The last part of May 1976 I was in Aberdeen and I had to be back to Seattle and home by June 3 because my Social Security income check would be there then. While I was still in Aberdeen, my Mother called and said Mr. Betts had been out to our home to see me about my testimony in the trial and said he would be

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Affidavit - Typed Copy - Further Proving Untruth  
To Judge By Attorney F. V. Betts, Def #1  
Re: COMPLAINT CP FILE #1 p 697 - Paragraph  
1.17 Through 1.22: Legal Malpractice

A-35

back in a day or two. I left Aberdeen earlier than planned so I could be at home when Mr. Betts returned to see me about Mrs. Koker's trial.

I waited several days in June 1976 getting upset and concerned because the trial date was approaching and I was afraid to leave the house because I might miss Mr. Betts.

Finally, late one afternoon just before the trial, Mr. Betts arrived at my home and talked to me. Upon leaving, he said he would get in touch and from that time I heard nothing more from him.

During our conversation I got the impression Mr. Betts was not for Mrs. Koker.

This affidavit was dictated to Mrs. Koker on the telephone for her to type up.

SUBSCRIBED AND SWORN  
before me this 3  
day of April 1980  
Notary Public in and  
for the State of Wash-  
ington residing at  
Cosmopolis

/s/  
Mildred Jones Formerly  
Mildred Connally  
PO BOX 1821  
Home: 913 E 2nd  
Aberdeen, Washington  
98520

/s/  
Rose Melinkovich

Affidavit - Typed Copy (Cont'd)

A-35(a)

STATE OF WASHINGTON )  
COUNTY OF GRAYS HARBOR ) SS.

MILDRED JONES, FORMERLY MILDRED CONNELLY, BEING FIRST DULY SWEORN UPON OATH, DEPOSES AND SAYS:

That I was a witness to Mrs. Koker almost being hit by a car. There was an empty lot to the alley and my home set up high across that alley and I could see all the lanes on Aurora Avenue including all of the left turn lane to N. 103rd Street at that corner.

I was looking out the frontroom window watching traffic on Aurora Avenue. I saw Mrs. Koker come to the corner going south to the crosswalk and looking both ways carefully and stood there approximately 3 minutes or more waiting for traffic to be completely clear.

There were no cars in the left turn lane on Aurora which turns to N. 103rd going west. The day was still light and there was no weather reason Mrs. Koker could not be seen.

Affidavit - Typed Copy - Proving Untruth  
To Judge By Attorney F. V. Betts, Def #1 A-36  
Re: COMPLAINT CP FILE #1 p 697 - (supra)

Mrs. Koker began to cross. She hadn't gotten quite to the middle of N. 103rd Street in the crosswalk when a car came speeding around and cutting the corner sharply from the left turn lane on Aurora turning left to N. 103rd. The driver was obviously distracted by oncoming southbound traffic on Aurora not to have seen her.

I saw Mrs. Koker raise her cane and shake it to attract the driver's attention. I had never seen her move anything but very slowly since the wreck and I observed that she could not jump nor get out of the way of that car.

I was so sure that the driver was going to hit her that I run to the door and as I run to the door, I hollered at my Mother. "Mrs. Koker's going to get hit by a car." I was so sure he was going to hit her because of the car speed, distance and her crippled condition.

Upon arriving outside in my yard, I found she had not been hit but the car had stopped

---

(Cont'd) Affidavit - Typed Copy

A-36(a)

about 2 feet in front of her. I saw she was not hurt and I went back into the house.

I waited until I felt she would be home and calmed down a little bit and I knew her habit of lying down after a trip to the store. I then called her and told her I had seen the car almost hit her and told her what I had witnessed.

I would be willing to testify in court at anytime, to my knowledge of Mrs. Koker's condition before and after the accident and to the contents of this affidavit.

This affidavit was dictated to Mrs. Koker on the telephone for her to type up.

/S/  
Mildred Jones  
Formerly Mildred Connally  
PO Box 1821 - 913 E 2nd Aberdeen, Wash  
98520

SUBSCRIBED AND SWORN to before me this

3 day of April, 1980  
Notary Public in and for the State of  
Washington residing at Cosmopolis

/S/  
Rose Melinkovich

(Cont'd) Affidavit - Typed Copy

A-36(6)

NUMERICAL ORDER - CLERK'S PAPERS #9346-1-I

CP FILE #1 p 697: COMPLAINT

✓ CP FILE #86 p 674: Affidavit F. V. Betts In  
Support Of Motion For Summary Judgment -

Motion For Cause I Only (And Denied):

No Motion For II III IV and Granted Summary  
Judgment.

✓ CP FILE #87 p 672: Summary Judgment Motion

CP FILE #97 p 671: "Predicted Prejudice" By  
Plaintiff. Filed March 7, 1980:

CP FILE #99 p 670: Plaintiff Note For & Motion  
CP FILE #100 p 664: To Strike Summary Judgment

CP FILE #102 p 663: Plaintiff CR 56 Additional

CP FILE #103 p 662: Plaintiff CR 56 Additional  
Matter "Authority" Filed March 19, 1980:

CP FILE #104 p 661: Plaintiff CR 56 Additional  
Matter "3-Way Factual Issue Of Credibility"

CP FILE #105 p 659: Order Not To Destroy Records

CP FILE #107 p 415: Plaintiffs' Memorandum in  
Opposition To Def #1 Motion for Summary Judg-  
ment (192 Pages) Circumstances Necessity:

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CP FILE #108 p 412: Plaintiffs Index To  
Memorandum In Opposition To Def #1

CP FILE #109 p 409: Pl Motion Continuance  
To Obtain "Lack Of Standard Of Care" Affidavit  
(Conspiracy Of Silence Encountered)

✓ CP FILE #111 p 403: Affidavit (TWO LINES) #1  
(NO EXPLANATION) One Letter Attached Is  
Evidence Of Conspiracy Calling Off Trial Behind  
Court's Back. (CP FILE #117 p 356)

✓ CP FILE #112 p 390: Affidavit (THREE LINES)  
(NO EXPLANATION) By F. V. Betts #1.

CP FILE #113 p 387: Motion For Continuance

CP FILE #115 p 386: Order Granting Continuance

CP FILE #116 p 376: Cross-Reference By Subject  
Matter to: Complaint, Def #1 Affidavit, And  
Beatrice Koker's Memorandum in Opposition.

CP FILE #117 p 356: Exhibits Show Two Attys  
Striking Trial Date By Themselves - 9 Days  
Later Judge Signs Order Continuance Being  
Given False Reason. Proven From Record.

CP FILE #118 p 337: Plaintiffs Memorandum In  
Opposition to CP FILE #112 p 390:

CP FILE #119 p 284: Plaintiffs Memorandum  
In opposition to Two Line Affidavit Def #1:

CP FILE #120 p 274: Plaintiff Affidavit  
Controverting Summary Judgment Motion

CP FILE #121 p 267: Plaintiff's Affidavit  
on Lack Of Standard Of Care - and - Dr.  
Henriksen Report-Deposition:

CP FILE #122 p 260: Proof of Untruth To  
Judge by F.V. Betts. Affidavit of Mildred  
Connelly APPENDIX A-35 and A-36 Herein:  
Original Affidavit Ex 9 and 10 CP FILE #107  
p 415:

CP FILE #123 p 244: Affidavit By Attorney  
"Lack Of Standard Of Care"

CP FILE #125 p 229: "Standard Of Care"  
Res Ipsa Loquitur - Laymen:

CP FILE #128 p 226: Apology To Court By  
Plaintiff: Re: Documents Compelled To File:

CP FILE #129 p 158: Controverting Affidavit

CP FILE #130 p 156: Medical Depositions 1976

CP FILE #131 p 153: Psychiatrist Deposition  
Submitted To The Court.

CP FILE #136 p 152: Affidavit Of Dr Einar  
Henriksen, Orthopedic Specialist Treating  
Plaintiff 4½ years before 1976 trial - after.

CP FILE #142 p 151: Issues For Jury

CP FILE #143 p 150: Jury Demand

CP FILE #146 p 127: Motion Reconsideration

CP FILE #145 p 149: Note For Trial Docket

CP FILE #148 p 107: Additional CR 56

CP FILE #149 p 64: Michael Mines For Def #1  
Submitted A Deposition To The Court With 18  
Relevant Pages Missing. (CP FILE #130 p 156  
Plaintiff Submitted All Medical Depositions  
COMPLETE.)

CP FILE #151 p 59: Recusal Letter Of Judge  
See: Appendix Herein A-5 And A-6:

CP FILE #153 p 42: Pl Objects To Recusal

CP FILE #155 p 39: Pl Answer Recusal Letter

CP FILE #159 p 29: Depositions Open-Publish

CP FILE #172 p 6: CP FILE #177 p 1: ORDER  
HEARING

# 9346-1-I

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STATEMENT OF THE CASE

Excerpts From Plaintiff

Opening Brief # 9346-1-T

The chronology for the case at bar is  
in APPELLANTS CIVIL APPEAL STATEMENT p 14-16:

The nature of the case is there on pages 2-3-4:

Brief p 15/7-27: "A motion for summary judgment was submitted February 25, 1980 by F. V. Betts, et ux, et al, Defendants #1. CP FILE #87 p 672 and was based upon the affidavit of F. V. Betts, which states the motion is only for Cause of Action I, when he is named in Cause I II III IV. CP FILE #86 p 674 - his affidavit p 2/9-15: Plaintiff filed a motion to strike the summary judgment motion of Def #1, to clarify their position on whether the motion was as stated for Cause One only, or omissions, or error. CP FILE #100 p 664: At the hearing, the court correctly stated that without a motion for Cause II III IV, those causes would go to trial. It was established at the hearing, the motion of

Excerpts---STATEMENT OF THE CASE

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F. V. Betts was only for Cause I. The Court allowed F. V. Betts to amend his affidavit to include Cause II III IV. The Court ruled to defer hearing the plaintiff's motion to strike until BEFORE oral argument of the summary judgment. RP "MORNING SESSION" "MOTION TO STRIKE" March 18, 1980 p 12/17-25: p 13/1-3; p 13/6-9: p 15/1-9: p 12/12-16: p 20/6-11:

\*Brief p 18/17-27: p 18/1-16:

THE SUMMARY JUDGMENT HEARING: This hearing was held May 16, 1980. Plaintiff brought up the matter of the motion to strike summary judgment, immediately, as the court had stated it would hear this motion BEFORE oral argument at the hearing to allow Mr. Betts to amend his affidavit. RP "SUMMARY JUDGMENT" May 16, 1980 p 2/5-21: shows the court erred in again deferring the ruling on "motion To Strike" and ultimately did not rule at all, but granted summary judgment Cause II III IV to Def #1 who did not even have a motion for those causes. THIS IS THE FIRST CONFLICT OF THE COURT,

Excerpts --- STATEMENT OF THE CASE 7376-1-1

A- 41 (a)

granting a summary judgment when he said in  
the RP "MORNING SESSION" "MOTION TO STRIKE"  
MARCH 18, 1980 p 12/17-23: Quoting:

Mrs. Koker: "But what will I  
answer? He Doesn't have any-  
thing in here to answer on all  
the four causes."

The Court: "Well, as I understand  
it, they are only attacking your  
Cause No. I."

Mrs. Koker: "So, they are admitting  
to the other?"

The Court: "No, not admitting. The  
other Causes will go to trial  
without a motion."

No affidavit of F. V. Betts was amended.

No motion was ever made for Cause II III IV  
for summary judgment. At the onset of the  
hearing for summary judgment Def #1, Plaintiff  
brought up the subject of "no-motion" immed-  
ately as had promises to be heard by the  
court March 18, 1980 supra. And reminded  
the Court the motion was only for Cause Of  
Action I. The Court then deferred the ruling  
on the "motion to strike summary judgment of

of Def #1" and ultimately did not rule upon it at all. RP "SUMMARY JUDGMENT" MAY 16, 1980

p 2/15-21:

\*\*\* Plaintiff did not have objections at the March 18, 1980 hearing for the court to allow extra time if Mr. Betts intended the motion for other than Cause I. It is self-evident that Mr. Betts made the motion for Cause I, and remained the motion for Cause I only. There is no amended affidavit. No motion for Cause II III IV.

TRIPLE CONFLICT BY COUNSEL  
MINES ON SUBJECT OF  
"NO-MOTION"

\*Brief p 20/11-27: p 21/2-13:

\*\*\* Counsel Mines is in conflict with himself three times in the record, in regard to the subject of "no-motion." (1) Counsel Mines for Def #1 misleads the court saying the summary judgment motion covers all causes of action I II III IV, and then reads the summary judgment motion to the court in

Excerpts--- STATEMENT OF THE CASE 9346-1-7

RP "MOTION FOR RECONSIDERATION" June 6, 1980

p 8/1-8: HOWEVER, it is significant that the Counsel Mines left off the last line of that summary judgment which is the key to the summary judgment motion being proven to be only for Cause of Action I. In CP FILE #87 p 672 the last line reads:

"This motion is based upon the accompanying affidavit of F. V. Betts."

\*\*\* The motion for summary judgment by Defendants #1 refers to the affidavit of F. V. Betts as the basis of the motion. In that affidavit to be found in CP FILE #86 p 674 - his affidavit p 2/9-15: Mr. Betts under oath states the summary judgment motion is only for Cause Of Action I: Quoting:

"This affidavit refers solely to the cause of action #1 of the complaint against this affiant and his partners ..."

\*\*\* The counsel first misleads the court in conflict one, supra, and now in conflict (2) Counsel Mines changes his mind and says

Excerpts--- STATEMENT OF THE CASE 9346-1-5

A-44

Cause II III IV do not need any affidavits because those actions do not state a claim upon which relief can be granted. What Counsel fails to observe is that the affidavit succinctly states the motion is for Cause I only. RP" MOTION FOR RECONSIDERATION" June 6.

1980 - p 8/9-13 and 20-24:

\* \* \* Without a motion for summary judgment, what's to rule? Then in conflict (3) Counsel Mines states an amended motion for summary judgment was what should have been filed.

RP "SUMMARY JUDGMENT" MAY 16, 1980 p 5/7-14:

\*Brief p 16/13-27:

\* \* \* Beatrice Koker answered Mr. Betts affidavits to his summary judgment motion which was only for Cause Of Action I. He did not amend nor add nor clarify his original position of a motion for only Cause I, and that is the way it stands to this day. I answered the affidavits to his summary judgment motion line by line, page by page.

Excerpts---STATEMENT OF THE CASE 9346-1-F

A-44 (a)

The brief is 192 pages long and has 12 exhibits. CP FILE #107 p 415: A separate index to this brief was made for the convenience of the lower court. CP FILE #108 p 412:

In this long brief, each section is preceded by a page explaining the line and page and subject matter being answered in that section. A cross-reference by subject was made. CP FILE #116 p 376:

\* Brief p 15/24-28: p 16/2-11:

\*\*\* "- - the criteria of CR 56 of the affidavit of "standard of care" was met with a conspiracy of silence involved with emotional feelings to some degree, and a continuance was granted by the court. CP FILE #113 p 367: then an ORDER CP FILE #115 p 386:

\*\*\* Counsel Mines for Def #1, at that hearing for continuance, presented two irrelevant-to-summary-judgment-affidavits from F. V. Betts. CP FILE #111 p 403: and CP FILE #112 p 390: (but there was no amended Excerpts---STATEMENT OF THE CASE 9346-1-1

affidavit regarding the summary judgment motion.) Plaintiff tried to discern what was meant by the Def #1 in their latest documents that had no explanation. In so doing, plaintiff found a further proof of conspiracy and collusion added to Untruth #4 of the Complaint. (supra) And my answered are in

CP FILE #117 p 356 - EXHIBITS 5(a) 5(b) (c)(d):

FOR PROOF: and CP FILE #118 p 337; and

CP FILE #119 p 284:

\* Brief p 17/15-27: p 18/1-5:

\*\*\* Counsel Mines submitted a deposition of my doctor in a former trial, but deleted 18 pages, which he offered to supply if the court asked. To this plaintiff to divide a sworn document is unthinkable! To avoid such deletion which had omitted important facts regarding this plaintiff's injuries, I submitted the COMPLETE deposition of that doctor, and every plaintiff doctor in the former litigation so that it could not happen again. CP FILE #131

p 153: CP FILE #130 p 156: and Michael Mines  
Excerpts---STATEMENT OF THE CASE 9346-1-1

deleted deposition CP FILE #149 p 64: Dr. Einar Henriksen affidavit is also submitted to the court showing that a doctor who had treated injuries from the falls caused by the injuries from the wreck, and examinations and consultations by a doctor for 4½ years had not been asked for a medical report at time of trial 1976, and the deposition of this doctor taken end of first day of trial! The affidavit of Dr. Einar Henriksen is CP FILE #136 p 152: All the depositions from the trial of 1976 are now opened and published and transferred to the case at bar. CP FILE #159 p 29:

\* \* \* Plaintiff filed five affidavits on May 7th and May 8th 1980, controverting, and rebutting, and obeying CR 56. There is a controverting affidavit in addition to the Memorandum opposing: CP FILE #107 p 415: (supra) CP FILE #120 p 274: Affidavit Re: informing F. V. Betts of testimony of third lay witness with EX 9 and 10 for proof. CP FILE #122 p 260:

Excerpts---STATEMENT OF THE CASE 9346-1-J

Affidavit re: Lack Of Standard Of Care (Dr  
Einar Henriksen Medical Report - Deposition)

CP FILE #121 p 267: Affidavit of "Standard  
of Care" CP FILE #123 p 244: Affidavit as  
to standard of care to be discerned by "lay  
men". CP FILE #125 p 229: The court will  
note the entire record reflects supreme  
opposition to cause of action I, the malpract-  
ice, which is the only cause the affidavit  
of F. V. Betts attacks, and no amendment,  
no oral motion, in court.

\* Brief p 19/15-27: p 20/2-5:

\* \* \* RP "SUMMARY JUDGMENT" MAY 16, 1980 the  
plaintiff argued Cause Of Action I. The  
Court asked the plaintiff to address herself  
to Cause of Action II III IV. Plaintiff wanted  
to give her prepared argument and asked if  
she could give her speech about due process,  
material facts et al. The court stated he  
would rather have me stick to CAUSE II III IV.

RP "SUMMARY JUDGMENT" MAY 16, 1980 p 32/10-23:

To me, this was a court order and to disobey would

Excerpts---STATEMENT OF THE CASE 9346-1-1

A-47 (a)

be contempt of court. At the end of what he asked in addressing Cause II III IV, plaintiff said: RP "SUMMARY JUDGMENT MAY 16, 1980  
p 47/14-24:

Mrs. Koker: "You see, that's all I have with me because I did not expect that I would have to do this, because they didn't even put in a motion for Causes 2,3 and 4. They are only putting in their Motion for Summary Judgment on Cause of Action 1, which they have incorporated there with the things that Mr. Betts did. So I was not prepared for that. That's all I have with me on that subject."

"I feel that the motion should have been - - that they were given ample time to correct it or put an extra affidavit in."

\* Brief p 21/14-28: p 22/12-27: p25/8-11:

\* \* \* Without a motion, there cannot be a ruling Cause II III IV because the court lacks jurisdiction. With a motion, by law, when one cause is GOOD as in Cause I herein, the other Causes II III IV go to trial. The summary judgment rulings of the court with or without a motion appear in the RP

"SUMMARY JUDGMENT" MAY 16, 1980 p 59/3-16: and  
Excerpts---STATEMENT OF THE CASE 9346-1-2

p 59/17-25: p 60/1-18:

\* \* \* This shows the court ruled on "specific Examples" of Cause II, calling those "SPECIFIC EXAMPLES" allegations. The allegations are in the COMPLAINT CP FILE #1  
p 697: Paragraph 2.3:

\* \* \* In CP FILE #1 p 697 Cause Of Action I  
Paragraph 1.1 Through Paragraph 1.89 and  
CAUSE OF ACTION II Paragraph 2.1 Through 2.58  
are identically pleaded and both defendants  
appear in the same capacity. The court  
states he uses the same approach to the alleg-  
ations of Cause I and II.

\* \* \* Approaching both Cause I and II in  
the same identical way as the court has stated  
supra, how then could he deny Cause I, and  
grant Cause II which did not even have a  
motion, but which in essence he ruled "spec-  
ific examples" and called them allegations  
showing the error and/or mistake.

RP "SUMMARY JUDGMENT" MAY 16, 1980 p 59/17-21:

Excerpts---STATEMENT OF THE CASE 9346-1-2

A-49

The court is trying to make "issuables" out of the "specific examples" which are for the purpose of proving the allegations. The court tried to find issuables in specific examples with proof, instead of addressing attention to the allegations of the misdeeds and wrongdoing prevelantly displayed in paragraph 2.3 of the Complaint, supra.

\*Brief p 25/12-27: p 26/3-28:

\*\*\* In ruling on Cause of Action III and IV the court indicated they were neither intentional torts. "RP "Summary Judgment"

May 16, 1980 p 59/24-25: p 60/1-18: The court ruled on the question of "intent" which is only for the jury. The court ruled erroneously again by depending upon what he understood I had said in answer to a question replying: "I doubt it." I correct the court saying "I really don't know." But the court would not accept the myriad of "it is only for the trier of the fact" over and over.

The record is devoid of anyone saying "I

Excerpts--- STATEMENT OF THE CASE 9346-1-2

doubt it." Therein, is an error of the court two ways. He uses that "I doubt it" alone for a ruling of such finality as summary judgment. Manifest error. Quoting from the record for accuracy. RP "SUMMARY JUDGMENT" MAY 16, 1980 p 43/13-18: The court asks if Beatrice Koker thought Mr. Betts did intentionally. I answered the Court:

"I don't know why he did it, your Honor, I can't say he did it intentionally. I would say that would be for the trier of the fact to determine. And that's what I have said all along, that it's for the trier of the fact."

\*\*\*\*\* The case at bar concerns what Def #1 and Def #2 have done to me. It is not this plaintiff's nature to "categorize" the circumstances of the case at bar to be affiliated to all actions by the two attorneys involved. Nor do I "categorize" the profession by what happened to me caused by these two professional men. Nor do I "categorize" the courts with a blanket opinion just because I have

been seeking justice for so long. Respect is imperative in my life. Respect for others, their respect for me. But most important is my respect for myself. This is the background for oral argument in the record where Beatrice Koker says: RP "SUMMARY JUDGMENT" MAY 16, 1980 p 55/22-25; p 56/1-3:

"And I think that people who are guilty of these wrongs, when they have been made to pay the redress and remedy, maybe they will feel better, too. I don't see that these people WANT to go about doing harm deliberately. I think this is something that they did, and maybe they regret it, I do not know. I know I regret it. I regret that they did it because I live with it, every day."

\*\*\* "Intent" by rule and law is only for the trier of the fact. The plaintiff is shocked by the ruling of the court on Cause II III IV. The main concern for the moment is another "concealment of concealment" withholding true facts from the jury. I asked the court a question and received an answer

that the elements of Cause II III IV would be staying in the malpractice Action I.

RP "SUMMARY JUDGMENT" MAY 16, 1980 p 61/8-13:

Mrs. Koker: "Did you notice in all of my pleadings and everything that I have said that civil rights and outrage are the result of Cause Of Action I and 2?"

The Court: "I think that's right. And what I have in mind is that, in allowing the malpractice to stay in court, those may be elements of that action."

THE JUDGE CHANGED HIS MIND

\*Brief p 27/9-28:p 28/3-27:

\*\*\* The "MOTION FOR RECONSIDERATION"

CP FILE #146 p 127 was filed by plaintiff, pleading with the court for a change of ruling. There was no motion upon which to rule Cause II III IV. "Intent" is only for the trier of the fact. The plaintiff reminded the Court that when one Cause is "good" the others go to trial. CP FILE #146 p 127 - Plaintiff

Document p 9/26-32:

Excerpts--- STATEMENT OF THE CASE 9346-1-2

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\*\*\* In final desperation "MOTION FOR RECONSIDERATION" ADDITIONAL CP FILE #146 p 107 was also filed. Plaintiff was under belief all elements of Cause II III IV would be made a part of Cause I, the malpractice, and therefore the jury would get a picture of the allegations and wrong, status quo. The reconsideration ruling is RF "RECONSIDERATION" JUNE 6, 1980, p 19/9-12: p 19/12-16:

The rulings of reconsideration are different than the ruling in summary judgment. All the elements are removed. The "not intentional torts", become "not properly pleaded" for Cause IV, and no ruling for Cause III. Cause II remains "not issuable" on the "Specific Examples" instead of ruling on the allegations.

\*\*\* Beatrice Koker could not tolerate the concealment of deceit again and told the court the concealment of deceit of the attorneys would be concealed again if he granted summary

judgment and that it was of great concern.

RP "RECONSIDERATION" JUNE 6, 1980 p 5/25:

p 6/1-6: p 7/19-23:

\* \* \*    "PREDICTED PREJUDICE" in CP FILE #97  
p 671 is in regard to division of joint-tortfeasors, would separate the "Multiple Grounds Not Separable."    RP "MOTION FOR RE-CONSIDERATION" JUNE 6, 1980 p 5/11-26:

JOINT-TORTFEASORS: In oral argument

RP "MOTION FOR RECONSIDERATION" JUNE 6, 1980

p 5/11-20: the plaintiff voiced her many written statements that there are multiple grounds not separable, that Mr. Betts is involved in all four Causes of Action, and Mr. LeMaster is involved in three Causes Of Action, and they are joint-tortfeasors in wrongdoing and in concert of misdeeds. In

CP FILE #153 p 42- p 8/23-31: Beatrice Koker tells the court how puzzled and disturbed she is about the rulings of the court. That by dismissing Def #2 there is protection of Defendants #1. Objections were made.

Excerpts--- STATEMENT OF THE CASE 9346-1-1

A.53 (a)

\* \* \* In oral argument the plaintiff tells the Court the burden of proof has not been met by Defendants #1, and they did not present evidence on the issue of material facts. When the plaintiff had proven there are material facts, above and beyond the call of duty in CR 56. RP "SUMMARY JUDGMENT" MAY 16, 1980  
p 55/12-14:

\*Brief p 23/19-28:

\* \* \* CP FILE #1 p 697; Paragraph 1.57 Lines 25-31: states cause of Action II applicable here in Cause of Action I against Def #1. Multiple Grounds Not Separable. Paragraph 1.55 (a) states Cause of Action I and Cause of Action II is applicable to the entire cause of Action I against defendants #1. Counsel Mines for defendants #1 in RP "SUMMARY JUDGMENT" MAY 16, 1980

p 31/21-25 says:

"I have lumped Causes of Action I and 2 together in my argument pretty much, because they are interrelated as to the effect on the case of malpractice."

THE RECUSAL:

\*Brief p 29/2-6: and 23-28:

"At the end of the "MOTION FOR RECONSIDERATION," June 1980 Honorable Judge William C. Goodloe, Preassignment Judge of the case at bar, recused himself from Cause 864 509, Superior Court. RP "RECONSIDERATION" JUNE 6, 1980 p 24/17-25: p 25/1-25: p 26/1-25: p 27/1-21:

RECUSAL LETTER: Honorable Judge Goodloe presented his recusal letter at the motion for reconsideration hearing. The letter is filed: CP FILE #151 p 59: The plaintiff's objections are in the CP FILE #153 p 42: and CP FILE #155 p 39: before ruling, before recusal in "reconsideration" court was talking settlement on appeal.

\*Brief p 30/3-27: p 31/2-28:

LAST CHANCE TO CHANGE THE COURT'S MIND:

Beatrice Koker submitted CR 56 Additional Matters to be ruled on before hearing regarding

signing the order. CP FILE #172 p 6: The plaintiff reminded the court of the ways this summary judgment must be denied Defendants #1. They cannot be granted a summary judgment without a motion, and even if the motion had included Cause II III IV - Cause I is "good" and the others go to trial. Plaintiff quoted 4 WASHINGTON PRACTICE 316 CR 56 20. to the Court in the CP FILE #172 p 6 - Plaintiff Document Page 6: The trier of the fact should have been awarded Cause I II III IV by law.

\*\*\* The additional matter concerned the conspiracy and collusion and deceit and concealment et al of Cause of Action II. That the very nature of the case and the defendants position of superiority demanded the trier of the fact. In the CP FILE #172 p 6 - Pl Document p 6/1-3; p 5/30-31-32: QUOTING:

"Concealment is the issue regarding the "intent" and this is only for the determination of the trier of the fact. Yet the court has granted summary judgment, questioning the plaintiff. I object to such a

question on the grounds that I am not the trier of the fact, and respectfully neither is the court in a summary judgment ruling."

\*\*\*, The Court is reminded in CR 56 additional matters that he has removed the elements of Cause II III IV and that Beatrice Koker cannot be a party to concealment. That to appear in a trial with a remnant of a case is to appear before a handicapped jury because the true facts will be withheld.

The plaintiff quoted from COMPLAINT CP FILE #1 p 697 proving the complaint alleged Cause of Action I and II are intentional misdeeds resulting in Cause of Action III and IV. Found in Complaint supra Paragraph 3.3 - 3.4 - 4.22: Speaking of the deeds and misdeeds of Cause I and II, and relating back.

\*\*\* Plaintiff made her oral motion plead for the court to change his mind to no avail. The order was signed. The court adhering to the prior rulings in summary judgment and motion Excerpts--- STATEMENT OF THE CASE 9344-J-I

A-56 (a)

for reconsideration in conflict, without a motion, contrary to law with or without a motion. Plaintiff objected to the order being signed. The Court took note of the objection, and signed the order. See: RP  
"THE ORDER" SEPTEMBER 3, 1980 p 2/7-8; p 5/  
11-14; p 5/14-21:

\* \* \* The order in CP FILE #177 p 1:  
Beatrice Koker paid \$67.00 for the supplementary Clerk's Papers for certification of the record, proof of service, and docket numbers:  
SEE: CP SUPPLEMENTARY FILE 188 p 1; and  
PRESENTATION CP FILE #188 p 63:

\* \* \* Plaintiff presented the Federal Question of due process and denial of Constitutional Trial. SEE: CP FILE #172 p 6 - Plaintiff's Document p 13/19-27; p 13/2-10; CP FILE #153 p 42 - Plaintiffs Document p 8/15-22: p 12/  
24-32: p 13/13-17; p 13/27-31:

\* \* \* The Court did not rule on "material facts", nor even mention material facts, yet

Excerpts--- STATEMENT OF THE CASE 9346-1-1  
A-57

the order is granted as "it appearing that there is no genuine issue of material fact with respect to Cause II III and IV, Defendants' motion for summary judgment with respect to Causes II III and IV is granted..."

\*Brief p 14/3-19:

\*\*\* The case at bar is complex, lengthy involved, repugnant and a precedent case. -- Both cars were insured by the same company in the wreck of June 1971, in which Beatrice Koker is the victim of permanent injuries, including a drop foot injury to wear a leg brace for life, permanent cervical injury, and knee injury et al, and injuries from falls caused by the original injuries. The jury awarded \$4,600. from a confused jury as per affidavit Exhibit 1 CP FILE #1 p 697:

\*\*\* RYAN V WESTGARD 12 Wash App 500 (1975) the court of appeals states \$145,000. is "within the bounds of sensible thought" for a drop foot injury.

Excerpts---STATEMENT OF THE CASE 93-<sup>46-1-2</sup>

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Error 1: "Summary Judgment - First Ruling"

The trial court erred in granting summary judgment to Defendants #1 Cause II III IV without a motion, and with or without a motion to grant this summary judgment is contrary to law, fact, rule and evidence of this case at bar. THERE ARE MATERIAL FACTS. ET AL.

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Error 2: "The Reconsideration - Second Ruling"

The trial court erred in denying plaintiffs' motion for reconsideration, thus affirming the Court's error granting summary judgment cause II III IV to defendants #1, and the ruling is contrary to law, fact, rule, evidence, with or without a motion. THERE ARE MATERIAL FACTS, QUESTIONS OF FACT, ISSUES OF CREDIBILITY.

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Error 3: "The Order"

The trial court erred in signing, entering and filing the order for granting summary judgment to defendants #1 Cause II III IV, contrary to law, fact, rule, evidence, and the Constitution of the United States, with or without a motion,

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ASSIGNMENT OF ERRORS - APPEAL 9346-1-I

over plaintiff's objections noted by the court. THERE ARE MATERIAL FACTS, ET AL.

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Error 4: "CONFLICT OF THE COURT - CONFLICT OF COUNSEL"

The trial court erred in granting summary judgment to Defendants #1 with or without a motion, done in conflict rulings of the court and conflict presentation by defense counsel for Def #1 Cause II III IV.

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Error 5: "Deferring Ruling Second Time - Ultimately No Ruling"

The trial court erred in deferring ruling SECOND TIME on plaintiffs' motion to strike, and ULTIMATELY the court did not rule at all, and in addition granted summary judgment Cause II III IV to Defendants #1, which with or without a motion is contrary to law and is error.

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Error 6: "Obstruction Of Justice" "Twice"

The trial court erred in granting summary judgment to Defendants #1 Cause II III IV contrary to law with or without a motion, and

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thus by court order there is obstruction of justice TWICE.

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Error 7: "A Trial Is Necessary"

The trial court erred in granting summary judgment when there are material facts and no indication plaintiff would not prevail at trial, and every indication she would prevail at trial, and the court in error, with or without a motion, dismissed allegations of conspiracy et al, questions of fact, issues of credibility, material facts, complex questions, intent, doubt, controversy et al, only for the trier of the fact and in so-doing disregarded public trust and public policy, DENYING REIMBURSEMENT TO TAXPAYERS BY RULINGS.

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Error 8: "Denial Of Due Process To Constitutional Trial"  
"Obstruction Of Justice"

The trial court erred in granting summary judgment to Defendants #1 with or without a motion Cause II III IV, denying plaintiff a Constitutional trial, which is a trial "fully and fairly heard in a meaningful manner", and by court

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order compelling "concealment of concealment" and withholding true facts from the jury.

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Error 9: "Light Most Favorable To Non-Moving Party"

The trial court erred in granting summary judgment to Defendants #1 Cause II III IV with or without a motion, and did not use the light most favorable to plaintiff when the court bypassed material facts, inferences, presumptions, evidence, facts, all in escrow for trier.

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Error 10: "Pleadings" "Pleadings - Intent"

The trial court erred in granting summary judgment to Defendants #1 with or without a motion, and ruling on pleadings Cause II using only "Specific Examples" without ruling on separately listed allegations in the evidentiary complaint; in Cause III IV, the court first ruled "intent" then ruled on pleadings, error in both.

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Error 11: "Divided They Fell"

The trial court erred in dividing joint-tort-  
ASSIGNMENT OF ERRORS - APPEAL 9346-1-I

feasors in their precedent wrongdoings, and results of wrongdoings, contrary to law, with or without a motion; leaving unresolved issues and facts to perish, destroying "Multiple Grounds Not Separable" all about which BOTH PARTIES ARE LITIGATING, in the identical capacity.

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Error 12: "Untimely Recusal" "State Courts"

The trial court erred in recusal AFTER all proceedings of two summary judgments were completed, and recusal combined with other legal aversions lead to question of whether there can be justice in the Washington State Courts.

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Error 13: "Advising And Influence Of Court"

The trial court erred in advising, influencing, of settlement or otherwise, BEFORE making the ruling in motion for reconsideration and BEFORE recusal, and also after both, in a later hearing.

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Federal Question

RECORD DEF-ONE ONLY

CP FILE #153 p 42:

My p 12/1-5: "There is a fundamental right for this plaintiff to have the elements of wrong in her trial in Cause II left for the trier of the fact to determine. Without which, there cannot be a fair trial because there will be evidence withheld by dismissal on summary judgment."

p 4/26-31: "But the fact remains, judgments and orders on summary judgment and reconsideration and all other rulings and decisions of the motions of defendants and plaintiff regarding summary judgment have been done to the detriment of this plaintiff in the rulings adverse to the major portion of her cause of action." "The complaint is evidentiary. There is proof of fact."

p 12/30-32: "This plaintiff finds herself in the position of being unconstitutionally deprived of 3 causes of action against both defendants in ruling, orders and decisions."

p 13/13-20: "Proven allegations in an evidentiary complaint must not be removed from the trial. That is denial of due process and prevention of a fair trial "fully and fairly heard" in a meaningful manner. Withholding evidence of wrongdoing as alleged is not fully and fairly heard."

p 6/31: "CALL FOR HELP: WHO PLEASE WILL PROTECT MY RIGHTS?"

A-61

FEDERAL QUESTION  
FROM RECORD OF  
DEF-ONE ONLY

CP FILE #172 p 6:

My p 17/17-19: "There was denial of equal protection under the law in the trial of 1976 because no trial has a steady diet of quasi judicial officers of the court telling untruths to the judge and jury."

p 19/31-32: "I respectfully implore this court to allow the trier of the fact the rightful place by law to adjudicate and determine this case."

p 20/25-28: "This plain fact will be backed by public interest that trials must be heard in full, fair and meaningful manner with the truth, the whole truth and nothing but the truth therein."

p 13/24-27: "This plaintiff cannot compromise her right to a trial, but must plead for recognition before it is too late, that only the trier of the fact has the right to verdict the damages of the proven wrong in the case at bar in all four causes I II III IV."

p 13/2-7: "The fact of the security under the Constitution of the United States that each and every citizen is guaranteed the truth in a court of law and when the truth is betrayed as alleged, by the quasi judicial officers of the court pledged to uphold the Constitution and all that it stands for, there is distress, anguish, outrage, intolerable in a civilized community."

A-62

Federal Question

CP FILE #119 p 284:

Petitioner's p 16/23-27: "The intention and purpose of the Constitution of the United States is that no one shall be denied the right to a trial. The description of that trial is one to be "fully and fairly" heard. The case at bar held deceit and untruths and alleged deviousness and subterfuge and concert."

ORAL ARGUMENT  
SUPERIOR COURT  
DEF-ONE

RP "SUMMARY JUDGMENT" MAY 16, 1980:

p 10-16i ""Why didn't your attorney help you? That is because all people - - all people--when they get into trouble the first thing they do is go to an attorney. We look to them as the protectors of all our rights. There's the Constitution, yes, but without the attorney the Constitution could not be enforced. And I'm saying that under the Constitution I did not have protection from my attorney who has a duty by law."

p 55/4-11: "I feel that under the due process of law I must have a trial on this. And I feel for them, too. They should have a trial to have this determined. That's why I say: "WHY?" And I have never attacked Mr. Betts' ability, as you know. It's that he did not use his ability, his obvious ability, for me. Now why he didn't do that has to be determined. It cannot be just dismissed here. I have given you material facts, issues of credibility."

*A-63*

ORAL ARGUMENT  
DEF-ONE only

RF "SIGNING OF ORDER" SEPT 3, 1980:

p 5/7-10: "If that's what you intend to do, then I'll have to appeal with all my might; and my right to a trial I must protect. My forefathers protected my right to a trial, and now here I am fighting to protect it too."

THE APPEAL #9346-1-I  
DEF-ONE

p 6/17-25: "Appealing the denial of due process to a Constitutional trial, which means a trial fully and fairly heard in a meaningful manner. Such a trial is not possible when Cause II III IV have dismissed the issues only for the trier of the fact, and escaped the co-defendants, joint-tortfeasors involved in alleged deceit, concealment, conspiracy and collusion, obstruction of justice and all other."

p 6/27-29: "Appealing a court order granting summary judgment to Def #1 Cause II III IV, and leaves in the wake "concealment of concealment" by removal of evidence demanded by due process."

p 11/5-6: "But a court order is a powerful adversary when that court order is contrary to law."

p 11/12-15: "This appeal is made because of necessity of rectifying now numerous wrongs, a necessity by Constitutional promise for redress and remedy. This plaintiff is owed a debt . . ."

Federal Question

THE APPEAL #9346-1-I  
Def-One Only

p 10/11-20: "... Appeal is under, also section 1103, bias of a decision maker: Section 1160(a) reasonable doubt, the validity of the judgment; abuse of discretion, obstruction of justice, prejudice and bias, and all other constitutional guarantees of court proceedings and rights of citizens and justice appealed for herein, and any and all rules and law and authority that apply."

THE CIVIL APPEAL STATEMENT

p 8/4-12: "The dismissal of three causes of action only for the trier of the fact, by law, leaves a question. Dividing joint-tortfeasors in allowing alleged conspiracy and collusion et al, leaves a question. The denial of a trial under the Constitution that must be in a "fully and fairly and meaningful manner," and is coerced into a summary judgment grave of dismissal, concealing the concealment, by court order, leaves a question. There is question that a jury is deprived of their function by ruling and order of the court."

p 23/8-10: "There is issue that plaintiff followed CR 56 Rule of summary judgment and Def #1 did not follow Rule CR 56."

p 47/11-12: "There is issue for review that there cannot be due process in the courtroom without truth."

Federal Question

THE CIVIL APPEAL STATEMENT  
APPEAL #9346-1-I Def-One

p 40/12-22: "There is issue for review in the method of denial of due process under the 14th Amendment, and denial of a trial. This plaintiff is not suggesting nor alleging there was not notice or that she was not heard in the court proceedings.

This plaintiff is stating emphatically that my Constitutional rights are being denied by granting of Summary Judgment to Def #1 in Cause II III IV, with or without a motion, because that ruling and order of the court denies the evidence of proof of misdeeds to be heard before the trier of the fact, according to the law of the land that a trial must be heard in a way fully and fairly and in a meaningful manner."

PRO SE

p 51/26-30: "There should be no need for a non-attorney to go into a court, when the protection is provided in the legal profession. In the case at bar, the plaintiff found protection lacking, and deceitful and untruth. In which case, there is no recourse but to be one's own attorney."

"Attorneys have made me pro se."

p 59/18-21: (K): "Relief sought in court of appeals a definite ruling on the Federal Question. That federal question being denial of due process by denying plaintiff a trial that can be fully and fairly heard in a meaningful manner."

CIVIL APPEAL STATEMENT  
APPEAL #9346-1-I Def-One

p 38/27-32: "Attorneys are not classified as "under color of law". In the case at bar the misdeeds of the attorneys in and out of a court of law, infringed upon my legal rights in deporting honesty and obstructing justice and loading the courts with untruths that this plaintiff and the public would find repugnant." "Section 1985(2) 35. 42 U.S.C.A. says it all for Cause III."

p 39/19-23: "In COFER V COUNTY OF PIERCE 8 Wash App 258 (1972) it states that a summary judgment is a valuable procedure for cutting through sham claims and defenses, but it may not encroach upon a litigants' right to place his evidence before a jury of his peers."

p 39/30-32: "There is issue in that there is a court order of legal disappearance of evidence to help the wrongdoers escape, leave, vanish and deny the plaintiff her right to a Constitutional Trial fully and fairly heard in a meaningful manner."

p 40/3-10: "There is issue for review that the same Constitutional Right applies to Defendant #1, the right to go to trial, to be heard in his own defense, to confront the issues and the jury, but instead Def #1 turns his back on a Constitutional Trial and skulks out the door of escape by summary judgment which is unconstitutionally granted to him via no motion, and would be contrary to law even with a motion as the case at bar is only for the trier . . ."

Federal Question

CIVIL APPEAL STATEMENT  
APPEAL #9346-1-I Def-One

p 28/26-32: "Why doesn't Mr. Betts want to go to trial as a Constitutional right? Does he foresee the self-evident proof of his wrongdoing and know the jury will see it and know it? Mr. Betts could not have escaped Cause II III IV without the help of the court. CR 56 was not kept. The Constitution was not kept. The ruling is contrary to law when only the trier of the fact is qualified to adjudicate the case at bar."

p 30(a)/2-5: "Controversy is only for the trier of the fact."

p 30(c)/13-16: "There is issue for review that proven facts designated by law for the trier of the fact are removed by court order that demands concealment and concealment of concealment by removal of misdeeds and did so without even a motion."

p 36/3-6: ". . . two quasi judicial officers of the court in their mutual and singular misdeeds and wrongdoing contrary to law, caused obstruction of justice to this plaintiff, and became a tort action of the case at bar."

p 36/14-21: 24-26: "There is issue for review that the court has granted both summary judgments to wrongdoers who by the Constitution of the United States owe redress and remedy to the plaintiff." "There is no right by law to grant summary judgment to these two defendants who have floundered about looking for excuses to escape."

THE CIVIL APPEAL STATEMENT  
APPEAL #9346-1-I DEF-ONE

p 24/11-14: "There is issue for review that the court order is unconstitutional providing legal limbo of concealment of concealment and therefore the first obstruction of justice has added a second obstruction of justice. . ."

p 26/28-32: "There is issue for review that two quasi judicial officers of the court have denied me the Constitutional guaranty of equality of justice in injuries which result from breach of legal duty and an infringement upon a legal right." "Const art 2 §6; art 5 §21:"

p 29/11-19: "There is issue presented for review that contradictory and impeachable evidence is raised. One example being: How can two defendants with overheard remarks they made, each present a different view of the facts. One says he doesn't remember, or it is not relevant, or he did not say it. The other admits it was said, but denies the truth of it calling it only "attorneys kidding each other" or "attorneys making chaffing remarks." To think of attorneys joking or kidding about conspiracy, or implied agreement of those encounters is an incredible incredibility issue."

p 39/4-7: "There is issue for review that this plaintiff is denied her right to a fully and fairly heard trial in a meaningful manner. . ."

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A-69

Federal Question

APPELLANTS OPENING BRIEF  
APPEAL #9346-1-I  
DEF-ONE

p 59/7-9: "Is there a game of escape of  
"Who shall dare to deprive any citizen  
of the absolute right to a Constitution  
trial, but is there any law against  
trying to?"

p 65/3-7: "A federal question is raised  
as to whether there will be a  
Constitutional trial that is fully  
and fairly heard in a meaningful  
manner."

p 9/21-25: "Does a citizen under the  
Constitution of the United States have  
the absolute right to place full  
evidence before a jury of peers fully  
and fairly and honestly in a meaning-  
ful manner without the shackled bind-  
ing of a court order which is contrary  
to law and fact?"

p 9/16-20: "The ruling of the court has  
denied Beatrice Koker due process  
to a Constitutional trial, which is  
a trial that is fully and fairly  
heard in a meaningful manner. There  
is obstruction of justice twice. A  
federal question in denial of a  
constitutional trial by the error  
ruling of the court."

p 48/16-17: "There is such provision in  
redress and remedy for such deceit  
in the authority of FOUR STAR STAGE  
LIGHTING, INC V MERRICK (1977)  
392 NYS 297 (4); Quoting p 298:  
"section 467 subd. 1, of judiciary  
law . . ."

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Federal Question

APPELLANTS OPENING BRIEF  
APPEAL #9346-1-I DEF-ONE

p 31/19-22: "Plaintiff presented the federal question of due process and denial of constitutional trial."

p 41/10-18: "In the RP "SUMMARY JUDGMENT MAY 16, 1980 p 12/7-18: p 59/1-2: The court used the Causes of Action separately in his rulings and did not rule on the pleadings as a whole. He says:

"I am going to rule on them by the numbers and will identify them for the purposes of my decision."

"But the l Annotation to RCW 811 B Pleadings 4.32.040 says that facts alleged are construed without reference to division of causes of action in the complaint. The complaint is to be construed as a whole, regardless of how many causes of action there are."

p 68/25-27: "This plaintiff feels she cannot receive a fair trial in State of Washington because of denial of Constitutional Trial fully and fairly heard in a meaningful manner."

p 69/5-11: "Plaintiff is specifically (K) asking for ruling on Federal Question of denial of due process to a Constitutional Trial, which is a trial that is fully and fairly heard in a meaningful manner, and the contrary to law rulings of the court and the court order compels withholding true facts of concealment and deceit and untruth and misdeeds from the jury."

APPELLANTS OPENING BRIEF  
APPEAL #9346-1-I  
DEF-ONE

p 50/4-5: "A trial is necessary to determine who did what to whom, when and where and how and why, and the damages and the liability."

p 59/6: "I gratefully claim the Constitution as my defender. All of it."

APPELLANTS REPLY BRIEF  
APPEAL #9346-1-I  
DEF-ONE

p 67/21-23: "To grant summary judgment Cause II III IV to Def #1 and Def #2 is denial of a trial fully and fairly heard in a meaningful manner."

p 70/6-8: "To separate Cause I II III IV, is to weaken-to-destruction plaintiff's case and shall handicap a jury. Plaintiff shall be denied a constitutional trial, fully and fairly heard in a meaningful manner from court rulings and order, over objections."

p 67/19-21: FEDERAL QUESTION

"Appellant claims ruling on federal question "J" "K" in APPELLANTS CIVIL APPEAL ST. p 57-58-59-60 and in APPELLANTS OPENING BRIEF J AND K p 69."

"PETITION FOR REVIEW"  
WASHINGTON STATE SUPREME  
COURT #49006-6 (Appeal 9346-1-I)

p 25/ F. CONCLUSION: "Relief sought is a trial fully and fairly heard for Cause I II III and IV against Def #1 et ux, et al Superior Court #864509."

FROM THE RECORD-SUPERIOR COURT  
APPEAL #9346-1-I  
DEF-ONE ONLY

CP FILE #129 p 158:  
Petitioners p 56/7-9:

"A fair trial is public concern and interest because the "long arm protection" of the United States Constitution is a personal birth-right for every American."

p 56/16-19: "As a citizen with legal representation, I had a sentry-guard of justice. Citizens do not understand the law as a lay person, nor the procedure of the courtroom and are in complete trust and reliance upon their attorney and the law of the land."

p 46/21-31: "Cause of Action IV is anguish caused to this plaintiff by two men in an Honorable Profession, pledged to protect the public and fidelity to a client and the image of the legal profession to instill a trust like no other in a litigant. The memories of shock of discovery of deceit in a court of law, and lies to a judge has instilled within me a trauma trust that undermines every trustworthy motive of anyone else. It is my nature to be trusting. Disloyalty and infidelity and alleged deceit and a record filled with concert of action has hurt and outraged and caused mental, emotional, physical hurt."

FROM THE RECORD - SUPERIOR COURT  
APPEAL #9346-1-I  
DEF-ONE ONLY

CP FILE #129 p158:  
Petitioners p 53/30:

"I had hoped for truth and honor  
in a court of law."

CP FILE #146 p 127:  
Petitioners p 11/13-16:

"There will be public question in  
posterity at least, to know why  
such acts, omissions, legal wrongs,  
deceit, and lies in a court escape  
confrontation in a court of law  
for trial by the trier of the fact."

CP FILE #148 p 107:  
Petitioners p 8/30-31:

"The experience of being betrayed  
by legal counsel has far reaching  
and long lasting effects."

CP FILE #107 p 415:  
Petitioners p 147/2-5:

"Honorable Felix Frankfurter said  
an attorney actively engaged in  
the conduct of a trial is not merely  
another citizen. He is an intimate  
and trusted and essential part of  
the machinery of justice, an  
"officer of the court" in the  
most compelling sense." (1959)  
IN RE SAWYER 360 U.S. 622, 668

APPELLANTS APPEAL  
#9346-1-I  
DEF-One ONLY

p 6/30-31: p 7/1-11: "Appealing dismissal of Def #1 in Cause II III IV as denial to public trust and policy not being reimbursed for two trials that the taxpayers paid for (unknown to them) when both trials were a waste of taxpayers money. In this way: The mistrial of 1975 totally unnecessary, proven from the record, and the trial of 1976 in which deceit and untruth and concealment and corruption of a trial is alleged and proven. Honorable Judge Dixon was quoted in a news media as estimating the cost of a trial is approximately \$3,000. per day. Defendants #1 and Defendants #2 owe the public approximately \$21,000. for the aforementioned court proceedings, which are now dismissed on summary judgment leaving the taxpayers, **THUS PUBLIC TRUST**, involved in the case at bar."

DAMAGES  
COMPLAINT

Identical Complaint

CP FILE #1 p 697 - Appeal #9346-1-I #1  
CP FILE #1 p 425 - Appeal #8935-8-I #2

Paragraph 2.58/30-32:

"I ask in damages that the County of King in the State of Washington be reimbursed for trial costs and charges, mistrial 1975 & trial of 1976."

APPELLANTS CIVIL APPEAL STATEMENT

p 47/2-3: "There is issue for review that an officer of the court has duties both private and PUBLIC."

APPELLANTS CIVIL APPEAL  
STATEMENT APPEAL #9346-1-I  
DEF-ONE

p 12/17-18: "The nature of the case at bar could become a class action because the subject matter concerns any citizen."

p 12/26-32: "By granting summary judgment to Def #1 and #2, the court has denied citizens reimbursement of their right because they paid for trials that are a disgrace to the Constitutional right to have a trial of truth. . ." The citizens have a right to stop the wrongdoers from profitting from a wrong at the expense of a citizen. Granting summary judgments removed this debt to society and people. Not paid."

p 27/25-29: CR 56 Wash Court Rules Annot p 47 16. designates when a summary judgment is improper and say, that the reasonableness of a party's acts is a question of fact, and it is a MATERIAL ISSUE in resolving litigation, and granting of summary judgment is improper."

p 28/16-21: "There is an issue of an intentional interference with a right without lawful justification, which as such is malicious in law. The attorneys are trained, taught, educated in integrity and have a fiduciary duty and duty to the PUBLIC and the court and law of the land."

p 36/31-32: "To lie is to deceive. To lie is to obstruct justice."

APPELLANTS CIVIL APPEAL  
STATEMENT APPEAL #9346-1-I  
Def-One

p 37/9-12: "To dismiss the wrongdoers is to betray PUBLIC TRUST in the honesty of the profession more so than to bring to task those who have committed the wrongs."

p 46/2-5: "There is issue for review that PUBLIC TRUST and PUBLIC POLICY shall be destroyed in the wake of removing misdeeds at will from the ears of the jury, thus prohibiting a trial of Constitutional value."

p 46/11-15: "There is issue to review in that PUBLIC TRUST and POLICY is involved in the case at bar and the release of the defendants and granting summary judgment contrary to law is a loss to the PUBLIC of approximately \$21,000."

p 46/17-20: "There is issue for review that any public citizen as a litigant has the inherent right to an honest trial and honest representation and honest opposition."

p 46/22-28: And 30-31; "There is issue to review who is protecting those who have committed misdeeds together and alone that are repugnant to the heritage of justice left to all PEOPLE, and the Oath of an Attorney that is defined to protect PEOPLE, and the CPR so laboriously assembled throughout the land to insure that the PROTECTION OF THE PEOPLE WILL BE UPHELD." . . .  
PUBLIC TRUST IS BETRAYED . . . ."

APPELLANTS OPENING BRIEF  
APPEAL #9346-1-I

p 44/26-28: "Do the facts and proof of this case shock the appellate conscience that the rights of "PEOPLE" can be so violated and discarded, and courts so disrespected and the law desecrated?"

p 50/26-27: "The PUBLIC expects trial to be sanctity of truth. The PUBLIC shall never understand how two attorneys could have failed so."

p 50/15-16: "GOD HELP US ALL IF TWO QUASI JUDICIAL OFFICERS OF THE COURT BE ALLOWED TO HARM A CITIZEN INSTEAD OF PROTECT THE PEOPLE."

p 9/5-8: "Has the Constitution of the United States dedicated to rights of PEOPLE and PROTECTION OF CITIZENS been violated in allowing to escape of redress and remedy through error of the court ruling and order . . . ?"

APPELLANTS REPLY BRIEF  
APPEAL #9346-1-I

p 69/17-18: "Beatrice Koker is betrayed by two members of the legal profession entrusted with protection of citizens."

p 25/First Paragraph: "A wise PUBLIC POLICY according to the Constitution may require higher standards to be adopted than those minimally tolerated. Attys have duty to protect and nurture PUBLIC ISSUE OF TRUST AND HONOR OF THE COURT AND INTEGRITY OF LEGAL PROFESSION. USCA CONSTITUTION AMENDMENT 14 251: 5 AM JUR 36 8551 Footnote 4: 14 CJS 892 Ptnt 19:"